

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA, ) CR-16-00519 LHK  
)  
PLAINTIFF, ) SAN JOSE, CALIFORNIA  
)  
VS. ) JULY 12, 2019  
)  
JOHNNY RAY WOLFENBARGER, ) PAGES 247-414  
)  
DEFENDANT. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE  
BY: MARISSA HARRIS  
150 ALMADEN BOULEVARD, SUITE 900  
SAN JOSE, CALIFORNIA 95113

FOR THE DEFENDANT: OFFICE OF THE FEDERAL PUBLIC DEFENDER  
BY: GRAHAM ARCHER  
SEVERA KEITH  
55 SOUTH MARKET STREET, SUITE 820  
SAN JOSE, CALIFORNIA 95113

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

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APPEARANCES (CONTINUED)

FOR NCMEC:                   BRYAN CAVE LEIGHTON PAISNER LLP  
                                  BY: ALEXANDRA WHITWORTH  
                                  THREE EMBARCADERO CENTER, 7TH FLOOR  
                                  SAN FRANCISCO, CALIFORNIA 94111

ALSO PRESENT:               CHRIS MARCEAU  
                                  SCOTT SCHELBLE

INDEX OF WITNESSES

GOVERNMENT'S

**SEAN ZADIG**

DIRECT EXAM BY MS. HARRIS	P. 251
CROSS-EXAM BY MR. ARCHER	P. 296
REDIRECT EXAM BY MS. HARRIS	P. 366
RECROSS-EXAM BY MR. ARCHER	P. 369

**SCOTT SCHELBLE**

DIRECT EXAM BY MS. HARRIS	P. 372
CROSS-EXAM BY MR. ARCHER	P. 393

**CHRIS MARCEAU**

DIRECT EXAM BY MS. HARRIS	P. 401
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1 SAN JOSE, CALIFORNIA

JULY 23, 2019

2 P R O C E E D I N G S

3 (COURT CONVENED AT 10:00 A.M.)

4 THE COURT: GOOD MORNING AND WELCOME.

5 OKAY. WOULD MR. ZADIG PLEASE TAKE THE STAND?

6 SIR, YOU'RE STILL UNDER OATH.

7 THE REPORTER: DO YOU WANT TO CALL THE CASE?

8 THE CLERK: YES. CALLING CASE 16-CR-519, THE  
9 UNITED STATES VERSUS JOHNNY RAY WOLFENBARGER.

10 MS. HARRIS: GOOD MORNING, YOUR HONOR.

11 MARISSA HARRIS FOR THE UNITED STATES.

12 THE COURT: GOOD MORNING.

13 MR. ARCHER: GOOD MORNING, YOUR HONOR.

14 GRAHAM ARCHER FOR MR. WOLFENBARGER. HE APPEARS BEFORE THE  
15 COURT OUT OF CUSTODY.

16 THE COURT: GOOD MORNING. WELCOME.

17 MS. KEITH: SEVERA KEITH ALSO FOR MR. WOLFENBARGER.

18 THE COURT: OKAY. WELCOME.

19 GO AHEAD, PLEASE.

20 MS. HARRIS: THANK YOU, YOUR HONOR.

21 MAY I APPROACH THE WITNESS? I'M JUST PROVIDING A COPY OF  
22 HIS DECLARATION.

23 THE COURT: GO AHEAD, PLEASE.

24 **(GOVERNMENT'S WITNESS, SEAN ZADIG, WAS PREVIOUSLY SWORN.)**

25 ///

**DIRECT EXAMINATION (RESUMED)**

BY MS. HARRIS:

Q. SO -- GOOD MORNING, MR. ZADIG.

A. GOOD MORNING.

MS. HARRIS: DID THE COURT REMIND HIM THAT HE'S STILL  
UNDER OATH FROM THE PREVIOUS PROCEEDINGS?

THE COURT: I DID. I CAN HAVE THE OATH ADMINISTERED  
AGAIN IF YOU WANT, BUT I DID REMIND HIM.

MS. HARRIS: OKAY.

THE COURT: I DON'T THINK IT'S NECESSARY.

MS. HARRIS: IT'S NOT, YOUR HONOR. THANK YOU FOR  
CLARIFYING.

Q. SO I BELIEVE WHEN WE BROKE ON THE 12TH OF JULY, WE HAD  
LAST DISCUSSED THE LAST OF ECIT'S INVESTIGATION INTO THE  
PHILIPPINE WEBCAM CONDUCT.

DO YOU RECALL THAT, SIR?

A. I DO RECALL THAT, YES.

Q. AND I BELIEVE YOU TESTIFIED THAT THE FINAL SET, OR AT  
LEAST THE MOST RECENT SET OF CYBERTIPS WAS FILED IN 2018; IS  
THAT CORRECT? OR EARLIER THIS YEAR?

A. I BELIEVE IT WAS EARLIER THIS YEAR.

Q. EARLIER THIS YEAR. OKAY. OKAY.

SO I'M JUST GOING TO SORT OF REDIRECT AND FOLLOW UP ON  
SPECIFICALLY WHAT HAPPENED AFTER REPORT 7405007 WAS FILED FOR  
MR. WOLFENBARGER IN THIS MATTER.

1 SO AT SOME POINT AFTER THAT REPORT WAS FILED WITH NCMEC,  
2 DID YAHOO RECEIVE LEGAL PROCESS RELATING TO MR. WOLFENBARGER?

3 A. IT DID, YES.

4 Q. DO YOU RECALL WHAT THAT PROCESS WAS?

5 A. I BELIEVE IT WAS A SEARCH WARRANT.

6 Q. OKAY. AND WHEN APPROXIMATELY WAS THE SEARCH WARRANT  
7 RECEIVED, IF YOU RECALL?

8 A. I BELIEVE --

9 THE COURT: IS MR. ZADIG'S MICROPHONE ON?

10 THE CLERK: I'M WORKING -- I'M NOT SURE IF ANY OF  
11 THEM ARE ON. THEY WERE WORKING EARLIER.

12 THE COURT: MS. HARRIS, DO YOU WANT TO MOVE YOURS  
13 CLOSER TO YOU?

14 I DON'T THINK MR. ZADIG'S IS ON.

15 THE CLERK: I'M NOT SURE ANY OF THEM ARE WORKING.

16 MS. HARRIS: I DON'T THINK IT'S ON, YOUR HONOR.

17 THE COURT: ALL RIGHT. WELL, PLEASE JUST --

18 MS. HARRIS: I'LL JUST TALK LOUD.

19 THE COURT: PLEASE TALK LOUD. THANK YOU.

20 THE WITNESS: I WILL DO THE SAME.

21 THE COURT: THANK YOU.

22 THE WITNESS: SO REGARDING THE SEARCH WARRANT, I'M  
23 NOT CERTAIN OFFHAND WHEN THAT WAS.

24 BY MS. HARRIS:

25 Q. OKAY. DO YOU RECALL WHICH YEAR IT WAS, OR --

1 A. I BELIEVE IT WAS LIKELY PROBABLY 2016.

2 Q. OKAY. AND ONCE YAHOO RECEIVED THE WARRANT, HOW DID THEY  
3 RESPOND?

4 A. OUR --

5 THE COURT: OH, THERE WE GO.

6 THE CLERK: I JUST HAD TO RESET IT.

7 THE COURT: THANK YOU.

8 THE WITNESS: OUR LEGAL TEAM -- SO WE HAD A TEAM  
9 WITHIN THE LEGAL DEPARTMENT CALLED THE LAW ENFORCEMENT RESPONSE  
10 TEAM THAT RESPONDS TO LEGAL PROCESS, BOTH CIVIL AND CRIMINAL.  
11 THE LAW ENFORCEMENT RESPONSE TEAM WOULD HAVE RESPONDED TO THAT  
12 LEGAL PROCESS.

13 BY MS. HARRIS:

14 Q. OKAY. DO YOU RECALL HAVING ANY COMMUNICATIONS WITH THE  
15 AGENT WHO WAS SERVING THE WARRANT ABOUT THE STATUS OF THE  
16 PROSECUTION?

17 A. I DO, YES.

18 MS. HARRIS: YOUR HONOR, MAY I APPROACH?

19 THE COURT: GO AHEAD, PLEASE.

20 BY MS. HARRIS:

21 Q. SO I'M HANDING YOU WHAT'S BEEN FILED IN THIS LITIGATION AS  
22 DEFENSE EXHIBIT N (HANDING).

23 WHY DON'T YOU JUST TAKE A QUICK LOOK THROUGH THOSE  
24 DOCUMENTS, MR. ZADIG.

25 (PAUSE IN PROCEEDINGS.)

1 THE WITNESS: OKAY.

2 BY MS. HARRIS:

3 Q. DO YOU RECOGNIZE THOSE COMMUNICATIONS, SIR?

4 A. I DO, YES.

5 Q. OKAY. ARE THOSE THE COMMUNICATIONS THAT YOU HAD WITH THE  
6 AGENT SERVING THE SEARCH WARRANT ON THIS CASE?

7 A. THEY ARE.

8 Q. SO I WANT TO DIRECT YOUR ATTENTION TO PAGE 1.

9 THERE WE GO.

10 SO -- OKAY. SO DIRECTING YOUR ATTENTION TO THE E-MAIL  
11 SENT ON JANUARY 24TH.

12 DO YOU SEE THAT, SIR?

13 A. I DO, YES.

14 Q. OKAY. IT APPEARS IN THE E-MAIL THAT YOU'RE ASKING FOR  
15 UPDATES ON THE JRWOLFEN02 CASE; IS THAT CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND WHY DID YOU REQUEST UPDATES ON THE CASE?

18 A. IT'S THE PRACTICE OF THE ECIT TEAM TO FOLLOW UP ON ALL  
19 PRIOR CHILD SAFETY SUPPLEMENTS TO OBTAIN FEEDBACK.

20 Q. AND WHAT'S THE REASON FOR THAT?

21 A. THERE'S A COUPLE REASONS. PRIMARILY IT IS BECAUSE WE HAVE  
22 FOUND THAT THE PRACTICE OF -- OUR EMPLOYEES WHO DEAL WITH THIS  
23 CONTENT, THAT IS, CHILD EXPLOITATION AND SEXUAL ABUSE CONTENT,  
24 IT'S VERY EMOTIONALLY DIFFICULT TO BE EXPOSED TO THAT TYPE OF  
25 CONTENT.



1           IN FACT, IT ACTUALLY -- ESSENTIALLY THE BRAIN, ACCORDING  
2           TO OUR WELLNESS SPECIALISTS THAT WE BRING IN, EXPERIENCES  
3           TRAUMA WHEN EMPLOYEES OR PEOPLE ARE EXPOSED TO THAT TYPE OF  
4           CONTENT.

5           AND WE BRING IN WELLNESS AND RESILIENCY COUNSELORS WHO --  
6           WITH A SPECIALTY IN TRAUMA ON A QUARTERLY BASIS WHO WORK WITH  
7           MY TEAM AND HELP THEM PROCESS THE IMAGES THEY SEE AND DEVELOP  
8           COPING STRATEGIES FOR DEALING WITH THIS.

9           ONE OF THE RECOMMENDATIONS THAT THEY PROVIDE IS THAT WE  
10          OBTAIN FEEDBACK TO PROVIDE BOTH CLOSURE TO THE PEOPLE WHO ARE  
11          EXPOSED TO THIS CONTENT, SO THAT'S MY TEAM, THE ECIT TEAM, AS  
12          WELL AS ENGINEERS WHO BUILD THE TOOLS ACROSS THE COMPANY, AND  
13          THE FRONT-LINE REVIEWERS ON OUR MODERATION TEAM.

14          AND SO THESE -- THE WELLNESS AND RESILIENCY EXPERTS HAVE  
15          RECOMMENDED WE OBTAIN THAT FEEDBACK FOR THE CLOSURE, AND ALSO  
16          TO HELP ENSURE THAT PEOPLE WHO ARE EXPOSED TO THIS CONTENT KNOW  
17          THAT THEY'RE DOING IT FOR A REASON, ESSENTIALLY.

18          Q.    OKAY.  YOU ALSO MENTIONED THAT YOU CONSULTED WITH  
19          ENGINEERS IN THIS PROCESS.  WHAT IS THE NATURE OF THAT  
20          CONSULTATION WITH THE COMPANY'S ENGINEERS REGARDING THIS  
21          PARTICULAR CONDUCT?

22          A.    SURE.  SO THERE ARE ENGINEERS ACROSS THE COMPANY WHO BUILD  
23          BOTH THE PRODUCTS THAT OUR USERS USE, LIKE YAHOO MESSENGER AND  
24          YAHOO MAIL AND OTHERS, AS WELL AS ENGINEERS THAT SUPPORT  
25          INTERNAL TOOLS, LIKE THE TOOLS THAT THE LEGAL TEAM USES TO

1 PRODUCE INFORMATION IN RESPONSE TO LEGAL PROCESS, AND THE TOOLS  
2 THAT THE TEAM USES TO REPORT IMAGES TO NCMEC, FOR EXAMPLE.

3 THE -- THESE ENGINEERS -- SO THESE FUNCTIONS DON'T  
4 GENERATE REVENUE FOR THE COMPANY. THE CHILD SAFETY REPORTING  
5 IS NOT A REVENUE GENERATING FUNCTION.

6 AND AS SUCH, WE NEED TO OBTAIN SUPPORT FOR DOING THIS TYPE  
7 OF WORK WITHIN THE COMPANY TO ALLOW IT TO OCCUR AND FOR MORE OF  
8 IT TO HAPPEN. WE NEED THE LEADERS, THE VICE PRESIDENTS OF THE  
9 VARIOUS ORGANIZATIONS AND THE VARIOUS PRODUCTS TO UNDERSTAND  
10 THAT THIS WORK HAS VALUE AND IS IN OUR BUSINESS INTEREST TO DO,  
11 EVEN THOUGH IT'S NOT IMMEDIATELY GENERATING ADVERTISING  
12 REVENUE.

13 SO WE SHARE THE RESULTS, WHEN WE LEARN ABOUT OUTCOMES LIKE  
14 CHILD RESCUES AND ARRESTS AND OTHER POSITIVE OUTCOMES, WITH A  
15 LARGE GROUP OF PEOPLE IN THE COMPANY. THIS INCLUDES THE ECIT  
16 MEMBERS, OUR LEGAL AND POLICY INDIVIDUALS, AND THEN THE  
17 ENGINEERS THAT I WAS DESCRIBING SO THEY KNOW THAT THE WORK THAT  
18 THEY HAVE BEEN WORKING ON AND ENABLING THE REPORTING OF THIS  
19 CONTENT ACTUALLY HAS SOME SORT OF VALUE BOTH TO THE COMPANY AND  
20 TO SOCIETY AND TO THEMSELVES.

21 Q. IS THERE ANY INTEREST IN IMPROVING THE PRODUCTS SO THAT  
22 THEY CANNOT BE EXPLOITED IN THIS WAY AGAIN?

23 A. YES, THAT'S ALSO A BIG PART OF WHAT ECIT DOES IS NOT ONLY  
24 DO WE LOOK AT PRODUCTS THAT HAVE ALREADY SHIPPED AND  
25 INVESTIGATIVE USE AND FRAUD AND OTHER ISSUES ON THEM, BUT WE

1 ALSO WORK WITH PRODUCTS THAT ARE PREVIOUS TO LAUNCH.

2 SO AS NEW PRODUCTS ARE BEING PLANNED, WE MEET WITH TEAMS  
3 AND TRY TO TELL THEM THAT THEY NEED TO BE CONSIDERATE OF  
4 CERTAIN CONTENT ISSUES. FOR EXAMPLE, THEY NEED TO MAKE SURE  
5 THAT THEIR PLATFORMS ARE NOT GOING TO BECOME HAVENS FOR CHILD  
6 PORNOGRAPHY OR CHILD ABUSE MATERIAL OR OTHER ONLINE SCAMS OR  
7 FRAUD.

8 AND WE USE THESE OUTCOMES WE GET FROM LAW ENFORCEMENT AS A  
9 WAY, ALMOST LIKE A CAUTIONARY TALE TO HELP EDUCATE ENGINEERS  
10 WHO ARE CONSIDERING LAUNCHING NEW PRODUCTS AND WE DON'T WANT  
11 THEM TO BE ABUSED IN THIS WAY.

12 Q. OKAY. SO IT HELPS THE ENGINEERS LEARN HOW TO MAKE -- HOW  
13 TO FORTIFY THEIR PRODUCTS AGAINST THIS TYPE OF ABUSE?

14 A. THAT'S CORRECT, YES.

15 Q. AND AGAIN -- AND IT HELPS, I BELIEVE YOU TESTIFIED  
16 PREVIOUSLY -- UPON THE RECOMMENDATION OF THE WELLNESS AND  
17 RESILIENCY EXPERTS THAT YOU GOT, IT HELPS TO PROVIDE CLOSURE  
18 FOR THE FRONT-OF-LINE CONTENT REVIEWERS WHO DEAL WITH THIS  
19 MATERIAL?

20 A. THAT'S CORRECT.

21 MR. ARCHER: OBJECTION. LEADING.

22 THE COURT: SUSTAINED.

23 BY MS. HARRIS:

24 Q. OKAY. I BELIEVE YOU TESTIFIED PREVIOUSLY ABOUT THE  
25 WELLNESS AND RESILIENCY EXPERTS THAT YOU GOT. IS THAT CORRECT?

1 A. YES. WE HAVE THESE TEAMS, LIKE I MENTIONED EARLIER, OF  
2 CONTENT MODERATORS WHO, DAY IN AND DAY OUT, ALL THEY DO IS LOOK  
3 AT OBJECTIONABLE CONTENT, CHILD ABUSE MATERIAL, TERRORISM  
4 CONTENT ON VARIOUS PROPERTIES, HATE SPEECH, HARASSMENT, KIND OF  
5 THE WORST OF THE WORST OF THE INTERNET. AND THAT JOB IS VERY,  
6 VERY DIFFICULT.

7 THERE'S ACTUALLY BEEN A LOT OF PRESS RECENTLY ABOUT OTHER  
8 COMPANIES AND THE TEAMS THAT THEY EMPLOY AND HOW THEY HAVE TO  
9 DEAL WITH SORT OF THE CONTENT THEY SEE.

10 SO MAKING SURE THAT THESE EMPLOYEES IN OUR COMPANY HAVE,  
11 YOU KNOW, PROPER MENTAL WELLBEING AS A RESULT OF THE CONTENT  
12 THEY'RE EXPOSED TO IS REALLY IMPORTANT TO US.

13 Q. I SEE.

14 DIRECTING YOUR ATTENTION TO ANOTHER E-MAIL THAT WAS FILED  
15 AS PART OF THIS EXHIBIT, ON JANUARY 25TH, 2017, IN THIS E-MAIL,  
16 YOU ARE INFORMED ABOUT CHARGES THAT WERE FILED IN THIS CASE; IS  
17 THAT CORRECT?

18 A. THAT'S CORRECT.

19 Q. OKAY. DO YOU RECALL HOW YOU RESPONDED WHEN YOU LEARNED OF  
20 THE CHARGES THAT WERE FILED?

21 A. IF I RECALL, I RESPONDED TO THE AGENT AND THANKED HER FOR  
22 THE INFORMATION AND INDICATED THAT WE WOULD RECORD IT OR NOTE  
23 IT ON OUR SIDE.

24 Q. OKAY.

25 THE COURT: IS THIS STILL DEFENSE N?

1 MS. HARRIS: IT IS, YOUR HONOR.

2 THE COURT: OKAY. GO AHEAD, PLEASE.

3 BY MS. HARRIS:

4 Q. SO NOW I'M GOING TO SHOW YOU DEFENSE EXHIBIT M, AS IN  
5 MARY.

6 DO YOU RECOGNIZE THIS E-MAIL, SIR?

7 A. I DO, YES.

8 Q. OKAY. IT'S AN E-MAIL FROM YOU?

9 A. THAT'S CORRECT.

10 Q. GO AHEAD AND TAKE A MINUTE TO READ IT.

11 (PAUSE IN PROCEEDINGS.)

12 THE WITNESS: OKAY.

13 BY MS. HARRIS:

14 Q. OKAY. SO IT APPEARS IN THIS E-MAIL THAT YOU'RE INFORMING  
15 YOUR TEAM, OR OTHER INDIVIDUALS, OF WHAT YOU CLASSIFY --

16 MR. ARCHER: OBJECTION. LEADING.

17 BY MS. HARRIS:

18 Q. -- AS A SUCCESSFUL OUTCOME; IS THAT CORRECT?

19 MR. ARCHER: OBJECTION. LEADING.

20 MS. HARRIS: IT'S STATED IN THE DOCUMENT, YOUR HONOR.

21 THE COURT: SUSTAINED.

22 BY MS. HARRIS:

23 Q. OKAY. HOW WOULD YOU CHARACTERIZE YOUR E-MAIL HERE?

24 A. I WOULD SAY THIS IS A TYPICAL EXAMPLE OF AN E-MAIL THAT WE  
25 WILL SEND TO THE GROUP OF INDIVIDUALS WITHIN THE COMPANY WHO

1 WORK ON CHILD SAFETY MATTERS.

2 SO IN THE "TO" LINE YOU SEE, IT SAYS CSE REPORTING  
3 OUTCOMES. THAT'S CHILD SEXUAL EXPLOITATION REPORTING OUTCOMES.  
4 IT'S THE LIST THAT WE BUILT WITH THE LEGAL AND POLICY AND  
5 ENGINEERING AND MODERATION TEAMS TO SORT OF SHARE OUTCOMES THAT  
6 WE LEARNED THAT ARE POSITIVE FROM CHILD SAFETY WORK.

7 THIS IS A VERY TYPICAL EXAMPLE OF ONE OF THOSE OUTCOME  
8 E-MAILS WE MIGHT SEND. WE NOTED WHAT HAPPENED, THE DATE OF THE  
9 ACTION. IN MANY CASES, WE'LL ATTACH COURT TRANSCRIPTS, OR NOT  
10 TRANSCRIPTS, BUT COURT DOCUMENTS, LIKE THE INDICTMENT OR ARREST  
11 AFFIDAVITS.

12 AND WE WILL THEN RECOGNIZE INDIVIDUALS ACROSS THE COMPANY  
13 WHO DIRECTLY CONTRIBUTED TO THIS GOOD OUTCOME. FOR EXAMPLE, IN  
14 THIS E-MAIL, I THANK THE MODERATION TEAM -- CE STANDS FOR  
15 CUSTOMER EXPERIENCE, PART OF THE ORGANIZATION WHERE THE  
16 MODERATION TEAM RESIDES -- I THANKED THEM FOR FILING DOZENS OF  
17 CYBERTIPS FOR THE YAHOO MESSENGER PROFILE PICTURES I DESCRIBED  
18 IN MY LAST TESTIMONY.

19 I THANKED THE INDIVIDUAL FROM THE LERT, LAW ENFORCEMENT  
20 RESPONSE TEAM, IN LEGAL WHO RESPOND TO THE SEARCH WARRANT.

21 I ALSO THANKED THE ENGINEER -- HIS NAME WAS JORGE -- WHO  
22 BUILT AND SUPPORTED THE LAT TOOL, LAT BEING THE TOOL THAT SENDS  
23 THE REPORTS TO NCMEC, FOR HIS ASSISTANCE.

24 AND THEN I CONCLUDED WITH SAYING, "IT'S GREAT TO START OFF  
25 THE YEAR WITH THESE WINS, WHICH WILL HELP GUIDE US THROUGH THIS

1 YEAR AND FOCUS OUR EFFORTS, TRYING TO MAKE SURE THAT EVERYBODY  
2 UNDERSTANDS THAT THE DIFFICULT WORK THAT THESE TEAMS DO IS VERY  
3 IMPORTANT."

4 Q. SO YOU APPEAR TO ACKNOWLEDGE SEVERAL PEOPLE IN THE E-MAIL;  
5 IS THAT CORRECT?

6 A. THAT'S CORRECT.

7 Q. OKAY. AND WHY WOULD YOU ACKNOWLEDGE SO MANY PEOPLE IN  
8 THIS E-MAIL?

9 A. WE FOUND THAT DIRECTLY RECOGNIZING THE INDIVIDUALS WHO  
10 CONTRIBUTED TO A PARTICULAR OUTCOME, A CHILD RESCUE OR AN  
11 ARREST OR SOME OTHER GOOD, POSITIVE OUTCOME, IS REALLY HELPFUL  
12 TO THAT INDIVIDUAL. IT HELPS THEM UNDERSTAND THAT ALL THE HARD  
13 WORK AND THE CONTENT THEY'VE BEEN EXPOSED TO, THE CHILD  
14 PORNOGRAPHY AND CHILD ABUSE IMAGES THEY'VE HAD TO EXPERIENCE,  
15 HAD AN OUTCOME THAT RESULTED IN SOMETHING THAT, YOU KNOW, WAS  
16 BEYOND THEMSELVES AND BEYOND THE COMPANY.

17 AND SO WE MADE A POINT, FOR ALMOST MY ENTIRE TIME AT  
18 YAHOO, TO DIRECTLY CALL OUT PEOPLE WHO CONTRIBUTED TO CERTAIN  
19 OUTCOMES.

20 Q. NOW, THE PRIOR EXHIBIT DEALT WITH E-MAILS BETWEEN YOU AND  
21 AGENT TROMBETTA; IS THAT CORRECT? EXHIBIT N.

22 A. THAT'S CORRECT.

23 Q. DID AGENT TROMBETTA EVER REQUEST INFORMATION ABOUT  
24 MR. WOLFENBARGER WITHOUT LEGAL PROCESS?

25 A. SHE DID NOT.

1 Q. DID YOU EVER PROVIDE ANY INFORMATION ABOUT  
2 MR. WOLFENBARGER TO THE FBI WITHOUT LEGAL PROCESS?

3 A. OUTSIDE OF OUR INITIAL REFERRALS TO NCMEC AND THE  
4 SUPPLEMENT PROCESS THROUGH CYBERTIPS, NO.

5 Q. SO WERE YOU THE PERSON IN CHARGE OF ECIT'S INTERNAL  
6 INVESTIGATIONS?

7 A. YES.

8 Q. I BELIEVE YOU TESTIFIED THAT THERE WERE ROUGHLY FOUR OF  
9 THEM. IS THAT CORRECT?

10 A. I BELIEVE SO, YES.

11 Q. WHAT WAS MANAGEMENT'S ATTITUDE IN TERMS OF THE INVESTMENT  
12 OF RESOURCES AND TIME INTO THESE INVESTIGATIONS?

13 A. MANAGEMENT, COMPANY MANAGEMENT, TO INCLUDE THE CEO, THE  
14 GENERAL COUNSEL, AND THE BOARD OF DIRECTORS OF YAHOO WHEN YAHOO  
15 WAS AN INDEPENDENT COMPANY PRIOR TO ACQUISITION, HAD BEEN  
16 INFORMED OF THESE INVESTIGATIONS AND WERE, FRANKLY, SHOCKED  
17 THAT THIS TYPE OF CONDUCT WAS HAPPENING ON THE PLATFORMS THAT  
18 THEY OPERATED.

19 AND SO THEY WERE VERY SUPPORTIVE OF THESE INVESTIGATIONS  
20 BECAUSE THEY DIDN'T, IN MY -- MY UNDERSTANDING OF WHAT I WAS  
21 TOLD IS THAT THEY DIDN'T WANT TO HAVE THIS BAD THING HAPPENING  
22 ON THEIR PLATFORMS.

23 Q. OKAY. WERE THESE INVESTIGATIONS CONDUCTED SOLELY TO CURRY  
24 GOOD FAVOR WITH INVESTIGATING AGENTS?

25 A. NO.



1 MR. ARCHER: OBJECTION. LEADING.

2 MS. HARRIS: IT'S A QUESTION.

3 THE COURT: OVERRULED.

4 GO AHEAD. YOU MAY ANSWER THE QUESTION.

5 THE WITNESS: THEY WERE NOT.

6 BY MS. HARRIS:

7 Q. AND WERE THESE INVESTIGATIONS CONDUCTED SOLELY TO GENERATE  
8 PUBLICITY?

9 A. THEY WERE NOT.

10 Q. WERE YOU THE POINT OF CONTACT FOR ALL LAW ENFORCEMENT  
11 INQUIRIES ABOUT THE USERS THAT ECIT REFERRED TO NCMEC IN ITS  
12 VARIOUS REPORTS?

13 A. I WAS.

14 AND I SHOULD TESTIFY, FOR YOUR PREVIOUS QUESTION, WE  
15 ACTUALLY DON'T WANT ANY PUBLICITY, IF WE CAN. WE HAVE -- WE  
16 DON'T ISSUE ANY PRESS RELEASES, WE DON'T TALK TO REPORTERS,  
17 WITH THE EXCEPTION OF AN NPR ARTICLE BACK IN 2017, ABOUT THIS  
18 WORK.

19 WE REALLY TRY TO SORT OF REMAIN, YOU KNOW, IN THE SHADOWS  
20 MORE OR LESS AND DON'T WANT TO DRAW ATTENTION TO THIS WORK.

21 Q. OKAY. AND I BELIEVE YOU JUST SAID THAT YOU WERE THE POINT  
22 OF CONTACT FOR LAW ENFORCEMENT INQUIRIES ABOUT USERS THAT ECIT  
23 REFERRED TO NCMEC?

24 A. YES, I WAS.

25 Q. AND WHAT DID THAT ROLE ENTAIL IN TERMS OF YOUR

1 INTERACTIONS WITH LAW ENFORCEMENT?

2 A. SO MY UNDERSTANDING WAS AFTER WE HAD MADE OUR REFERRALS TO  
3 NCMEC, WHICH WERE THEN SENT TO THE FBI AND HOMELAND SECURITY,  
4 THE UNITS OF THOSE AGENCIES THAT RECEIVED THOSE WERE  
5 HEADQUARTER UNITS AND -- IN WASHINGTON, D.C., AND THEY WOULD  
6 SEND -- THEY WOULD ESSENTIALLY SEND PACKETS TO THE FIELD, FIELD  
7 AGENCIES, OR FIELD, RATHER, OFFICES AROUND THE COUNTRY WHO  
8 WOULD THEN DO INVESTIGATION ON THE VARIOUS USERS THAT WERE IN  
9 THOSE REPORTS.

10 SO I WOULD OFTEN GET CALLS FROM VARIOUS FIELD OFFICES OF  
11 THE FBI OR HOMELAND SECURITY WHEN THEY HAD QUESTIONS ABOUT  
12 UNDERSTANDING THE CONTEXT OF WHY THEY WERE LOOKING AT THIS  
13 PARTICULAR E-MAIL ADDRESS.

14 OFTENTIMES THEY WOULDN'T GET A WHOLE LOT OF INFORMATION  
15 FROM, SAY, FBI HEADQUARTERS, AND SO THEY WOULDN'T UNDERSTAND  
16 HOW DID THE INVESTIGATION COME ABOUT, HOW DOES -- HOW DO WE  
17 FIND IT, WHAT WAS THE METHOD THAT WE CONDUCTED OUR  
18 INVESTIGATION. ALL THE THINGS THAT WE PROVIDE TO THE FBI  
19 INITIALLY DIDN'T TRICKLE THEIR WAY DOWN TO THE FIELD OFFICE, SO  
20 WE PROVIDED THAT CONTEXT.

21 WE ADDITIONALLY -- BECAUSE WE RECEIVED A LOT OF QUESTION S  
22 ABOUT SERVING LEGAL PROCESS, WE WOULD PROVIDE INFORMATION ON  
23 OUR POLICIES WITH RESPECT TO LEGAL PROCESS, HOW TO SERVE LEGAL  
24 PROCESS, POINTS OF CONTACT FOR THE LEGAL TEAM, AND THINGS LIKE  
25 THAT.

1 Q. DID YOU EVER PROVIDE INFORMATION TO THE AGENTS THAT YOU  
2 SPOKE WITH, THE FIELD AGENTS, THAT WAS NOT -- THAT HAD NOT  
3 ALREADY BEEN PROVIDED TO NCMEC?

4 A. I DID NOT.

5 Q. DID YOU EVER GIVE THEM INFORMATION ABOUT AN INDIVIDUAL  
6 USER OUTSIDE OF THE LEGAL PROCESS SERVED?

7 A. NO, I DID NOT.

8 Q. AND WAS IT YOUR JOB TO SEE THAT LEGAL PROCESS REQUESTS  
9 WERE RESPONDED TO IN A TIMELY MANNER?

10 A. IT WAS NOT. HOWEVER, THE ECIT, E-CRIMES INVESTIGATES  
11 TEAM, DEFINITELY HAD A VESTED INTEREST IN ENSURING THAT THE  
12 CASES THAT THEY HAD SENT OUT WERE PROCESSED SO THE COMPANY  
13 COULD RECEIVE THE BENEFIT OF, YOU KNOW, THE BAD ACTIVITY  
14 HAPPENING, OR I SHOULD SAY BAD ACTIVITY STOPPING.

15 SO I WORKED WITH OUR LEGAL TEAM TO ENSURE THAT LEGAL  
16 PROCESS THAT WAS RECEIVED, IF I BECAME -- IF I -- I'LL  
17 PROJECT -- IF I BECAME AWARE OF IT, IT WAS PROCESSED CORRECTLY.

18 Q. DO YOU RECALL EVER RECEIVING ANY REQUEST TO RETRIEVE  
19 INFORMATION FROM PARTICULAR YAHOO ACCOUNTS WITHOUT PROPER LEGAL  
20 PROCESS?

21 A. NO, I DO NOT.

22 Q. TO YOUR KNOWLEDGE, DID YOU OR OTHER ECIT MEMBERS EVER  
23 DISCLOSE USER INFORMATION OR CONTENT WITHOUT PROPER LEGAL  
24 PROCESS?

25 A. NO, WE DID NOT.

1 Q. TO YOUR KNOWLEDGE, DID YOU OR ECIT EVER DISCLOSE TIPS OR  
2 LEADS ABOUT USERS IMPLICATED IN THESE INTERNAL INVESTIGATIONS  
3 TO LAW ENFORCEMENT WHILE THESE INVESTIGATIONS WERE ONGOING?

4 A. I DON'T BELIEVE SO, NO.

5 Q. DID ANY LAW ENFORCEMENT AGENCY PROVIDE YOU OR ECIT WITH  
6 INFORMATION TO AID ECIT'S INTERNAL INVESTIGATIONS?

7 A. NO, THEY DID NOT.

8 Q. DID YOU EVER FEEL COMPELLED BY NCMEC OR ANY OTHER LAW  
9 ENFORCEMENT AGENCY TO CONDUCT THESE REVIEWS AND INVESTIGATIONS?

10 A. NO. AND IN FACT, AS PART OF OUR REFERRALS, WE  
11 SPECIFICALLY STATE TO LAW ENFORCEMENT, BOTH IN THESE PHILIPPINE  
12 WEBCAM CASES, AS WELL AS OTHER, SAY, WEST AFRICAN OR ACCOUNT  
13 HIJACKING OR SPAM INVESTIGATIONS WE MIGHT REFER, THAT WE DO NOT  
14 DO -- AFTER WE MAKE A REFERRAL, WE DO NOT DO INVESTIGATION  
15 AFTER THAT POINT. WE DON'T DO INVESTIGATION AFTER THE POINT OF  
16 OUR REFERRAL, AND EVERYTHING ELSE AFTER THAT HAS TO GO THROUGH  
17 LEGAL PROCESS.

18 Q. WERE YOU EVER REWARDED BY NCMEC OR OTHER LAW ENFORCEMENT  
19 AGENTS FOR CONDUCTING THESE INVESTIGATIONS OR FILING  
20 CYBERTIPLINE REPORTS?

21 A. NO, WE WERE NOT.

22 Q. DID YOU OR ECIT CONDUCT THESE INVESTIGATIONS OR FILE  
23 CYBERTIPLINE REPORTS WITH THE EXPECTATION THAT IT WOULD RESULT  
24 IN ANY TYPE OF REWARD OR PAYMENT?

25 A. NO, WE DID NOT.

1 Q. DID YOU OR ECIT CONDUCT THESE INVESTIGATIONS OR FILE  
2 CYBERTIPLINE REPORTS TO RECEIVE OR MAINTAIN THE GOODWILL OF  
3 NCMEC, THE GOVERNMENT, OR ANY LAW ENFORCEMENT AGENCY?

4 A. NO.

5 THE CLERK: IT'LL TAKE A MOMENT TO GO BACK ON.  
6 SORRY.

7 MS. HARRIS: NO PROBLEM.

8 THE COURT: YOU MAY NEED TO FOCUS THAT A LITTLE MORE.

9 MS. HARRIS: IS IT -- THIS ONE ISN'T WORKING.

10 THE COURT: DID IT TURN OFF?

11 MS. HARRIS: YEAH. AS LONG AS IT'S WORKING ON THE  
12 OTHER ONES.

13 THE CLERK: YEAH, IT'S ON THE OTHERS.

14 THE COURT: SORRY. IS THAT ONE NOT WORKING AGAIN?

15 THE CLERK: LET'S SEE.

16 THE COURT: WHAT IF WE TURNED AROUND THE MONITOR ON  
17 COUNSEL TABLE?

18 MS. HARRIS: YEAH, THAT'S ALSO FINE. AS LONG AS YOU  
19 ALL CAN JUST TELL ME WHEN YOU CAN'T --

20 THE COURT: IT'S CLEAR NOW. THANK YOU.

21 BY MS. HARRIS:

22 Q. OKAY. SO I'M SHOWING YOU BATES 1644, IT'S BEEN FILED IN  
23 THIS LITIGATION AS DEFENSE EXHIBIT RR, SO THIS IS ONE OF THE  
24 DOCUMENTS FILED IN RR.

25 CAN YOU PLEASE TAKE A LOOK AT THE E-MAIL?

1 A. OKAY.

2 Q. ALL RIGHT. CAN YOU EXPLAIN WHAT, WHAT IT IS THAT YOU'RE  
3 CONVEYING IN THIS E-MAIL?

4 A. YES. SO THIS IS ACTUALLY AN EXAMPLE, I SHOULD SAY, OF  
5 NOTIFYING LAW ENFORCEMENT PRIOR TO OUR, OUR SUPPLEMENT, WHICH I  
6 BELIEVE OCCURRED IN FEBRUARY OF 2016, THAT WE HAD IDENTIFIED AN  
7 INDIVIDUAL THAT WE HAD ALREADY PROVIDED IN A CYBERTIP WHO WAS  
8 APPARENTLY PLANNING TO TRAVEL OUTSIDE THE COUNTRY, IF I RECALL,  
9 I BELIEVE TO THE PHILIPPINES, AND THAT WAS PRIOR TO OUR MEETING  
10 IN WASHINGTON, D.C.

11 USUALLY WE WOULD NOT DO THIS. HOWEVER, BECAUSE THERE WAS  
12 THE LIKELIHOOD OF WHAT WE BELIEVED TO BE IMMINENT CHILD ABUSE  
13 THAT WOULD HAPPEN WITHOUT -- IF WE DIDN'T NOTIFY LAW  
14 ENFORCEMENT, THIS CHILD ABUSE WOULD OCCUR, SO WE ESSENTIALLY  
15 WENT OUT OF BAND IN THIS INSTANCE AND NOTIFIED LAW ENFORCEMENT  
16 AHEAD OF TIME THAT -- TO NOTE A CYBERTIP THAT HAD ALREADY  
17 PREVIOUSLY BEEN FILED.

18 Q. OKAY. DO YOU RECALL IF THE INDIVIDUAL PLANNING TO TRAVEL  
19 IN FEBRUARY INFORMATION WAS INCLUDED IN THE CYBERTIP?

20 A. YES, I BELIEVE SO. I ACTUALLY WOULD HAVE TO KNOW WHAT  
21 CYBERTIP IT WAS.

22 AS I MENTIONED LAST TIME, WE HAD TWO TYPES OF CYBERTIPS.  
23 WE WOULD HAVE THE IMAGE CYBERTIPS AND WE WOULD HAVE THE TEXT  
24 CYBERTIPS, THE TEXT ONES BEING LIKE CHAT COMMUNICATIONS WHERE  
25 OFTEN TRAVEL WAS DISCUSSED.

1 I BELIEVE, ALTHOUGH I DON'T KNOW FOR CERTAIN, THAT THIS  
2 WAS ONE OF THE CHAT CYBERTIPS WHERE THE TEXT OF THE CYBERTIP  
3 WAS VERY CLEAR THAT THE INDIVIDUAL WAS TRAVELING FOR THE  
4 PURPOSE OF CHILD ABUSE.

5 Q. OKAY. AND, AGAIN, IT'S REDACTED HERE, BUT THIS E-MAIL  
6 APPEARS TO REFER TO A SPECIFIC CYBERTIP THAT HAD ALREADY BEEN  
7 FILED?

8 A. CORRECT. IT WAS A CYBERTIP THAT WE HAD FILED TO NCMEC.  
9 IN THIS CASE IT WAS, I BELIEVE, CONNECTED TO THE PHILIPPINE  
10 WEBCAM CASE.

11 BUT OUR CYBERTIP PROCESS WAS INDEPENDENT ESSENTIALLY OF  
12 THE SUPPLEMENT PROCESS I FOLLOWED.

13 Q. THANK YOU.

14 THIS IS 1645, ALSO OF DEFENSE EXHIBIT RR. WHY DON'T YOU  
15 TAKE A READ OF THAT?

16 (PAUSE IN PROCEEDINGS.)

17 THE WITNESS: OKAY, YES.

18 BY MS. HARRIS:

19 Q. OKAY. WHY DON'T YOU EXPLAIN WHAT'S HAPPENING IN THIS  
20 E-MAIL?

21 A. SO THIS IS AN E-MAIL THAT I SENT TO AGENT YESENSKY. THIS  
22 IS ACTUALLY NOT CONNECTED TO THE PHILIPPINES WEBCAM  
23 INVESTIGATION.

24 THIS IS -- THE BULK OF WHAT THE ECIT DOES WITH RESPECT TO  
25 CHILD SEXUAL ABUSE INVESTIGATIONS RELATES NOT TO LARGE-SCALE

1 SUPPLEMENTS, OR LARGE-SCALE INVESTIGATIONS LIKE WEBCAM  
2 INVESTIGATIONS, BUT TO INDIVIDUAL CYBERTIPS.

3 AS I MENTIONED LAST TIME, THE ECIT REVIEWS EACH CYBERTIP  
4 THAT GETS SENT OUT AND DETERMINES IF THERE ARE SITUATIONS THAT  
5 MIGHT INVOLVE IMMINENT HARM TO CHILDREN, INDIVIDUALS IN  
6 POSITIONS OF AUTHORITY, OR WHO HAVE ACCESS TO CHILDREN, OR  
7 SEXUAL OFFENDERS.

8 THIS IS ONE OF THOSE INDIVIDUAL CASES WHERE AN INDIVIDUAL,  
9 I RECALL, WHO WAS USING OUR FLICKR PRODUCT AT THE TIME, WAS A,  
10 I BELIEVE A BUDDHIST MONK, A UNITED STATES CITIZEN FROM OHIO,  
11 BUT RESIDED IN THAILAND AND WORKED AS A BUDDHIST MONK, AND  
12 OPERATED -- OR DID A LOT OF WORK WITH ORPHANS, AND BASED ON  
13 OUR, ON THE INVESTIGATION, WE BELIEVED HE WAS ACTUALLY ABUSING  
14 THE CHILDREN IN HIS CARE.

15 AND SO WE WANTED TO ESCALATE THIS TO LAW ENFORCEMENT, SO  
16 WE MADE A CYBERTIP AND SUPPLEMENT. BUT BECAUSE I KNEW THAT  
17 AGENT YESENSKY HAD DONE A LOT OF WORK IN THAILAND UNRELATED TO  
18 THE PHILIPPINES WEBCAM INVESTIGATION, I WANTED TO MAKE SURE HE  
19 WAS AWARE SO HE COULD TRY TO GET THE PROPER RESOURCES DIRECTED  
20 TO THIS.

21 Q. WAS THE INFORMATION INCLUDED IN THIS E-MAIL REPORTED IN  
22 THE CYBERTIPS THAT ARE REFERENCED UNDER REDACTION?

23 A. YEAH. YES, IT WAS.

24 Q. AND YOU ALSO MENTION A SUPPLEMENT POTENTIALLY THAT -- OR  
25 EXCUSE ME -- THAT WAS APPARENTLY FILED WITH NCMEC IN THE LAST



1 PARAGRAPH. IS THAT CORRECT?

2 A. THAT IS CORRECT.

3 Q. OKAY. SO, AGAIN, YOU FILED INDIVIDUAL CYBERTIPS AND A  
4 SUPPLEMENT CONTAINING THIS INFORMATION?

5 A. YES, THAT'S RIGHT.

6 Q. THANK YOU.

7 THE COURT: SO YOUR DISCOVERY PRODUCTION OF  
8 COMMUNICATIONS BETWEEN YAHOO'S ECIT AND THE FBI WAS NOT LIMITED  
9 TO THE PHILIPPINES WEBCAM CASE? YOU INCLUDED OTHERS RELATING  
10 TO OTHER CHILD PORNOGRAPHY OR OTHER CHILD SEXUAL ABUSE?

11 MS. HARRIS: ALL COMMUNICATIONS. WE ASKED THEM TO  
12 LOOK FOR ANY COMMUNICATIONS BETWEEN -- THIS WAS PROVIDED BY  
13 AGENT YESENSKY, YOUR HONOR.

14 SO WE ASKED AGENT YESENSKY TO LOOK FOR ANY COMMUNICATIONS  
15 THAT HE HAD WITH MR. ZADIG OR OTHER YAHOO, AND THIS IS WHAT WAS  
16 PROVIDED TO US.

17 THE COURT: OKAY. BUT THAT CERTAINLY INCLUDED  
18 DISCOVERY BEYOND THE PHILIPPINES, THE STREAMING, THE WEBCAM OF  
19 CHILD SEXUAL ABUSE?

20 MS. HARRIS: YES, ACCORDING TO THE WITNESS'S  
21 TESTIMONY.

22 THE COURT: OKAY. GO AHEAD, PLEASE.

23 BY MS. HARRIS:

24 Q. THIS IS BATES 1647, ALSO OF DEFENSE EXHIBIT RR.

25 WHY DON'T YOU GO AHEAD AND READ THAT?

1 A. OKAY.

2 Q. WHAT'S HAPPENING IN THIS E-MAIL?

3 A. SO THIS WAS AN E-MAIL I HAD SENT TO AGENT YESENSKY TO SET  
4 UP A TIME TO HAVE A MEETING AT NCMEC TO DISCUSS -- WELL, TO  
5 DISCUSS THE REFERRAL, THE SUPPLEMENT THAT WE HAD SENT TO NCMEC  
6 PRIOR.

7 Q. OKAY. WE DISCUSSED THIS PREVIOUSLY DURING THE LAST DAY OF  
8 TESTIMONY, IS THAT CORRECT, THAT MEETING?

9 A. YES, WE DID.

10 Q. THANK YOU.

11 THIS IS BATES 1649, ALSO OF DEFENSE EXHIBIT RR.

12 LET ME KNOW WHEN YOU'RE READY.

13 A. OKAY, YES.

14 Q. WHAT IS THE PURPOSE -- WHAT IS THIS E-MAIL COMMUNICATING?

15 A. A NUMBER OF THINGS ACTUALLY. SO AGENT YESENSKY HAD, I  
16 BELIEVE, HAD PREVIOUSLY INQUIRED IF I COULD TRAVEL TO EUROPOL,  
17 THE EUROPEAN POLICE CONSORTIUM, TO TALK ABOUT WHAT MY TEAM  
18 DOES.

19 MY LEGAL DEPARTMENT WAS A LITTLE WARY OF THAT AND DIDN'T  
20 WANT ME TO GO TO EUROPOL TO TALK ABOUT THIS, MOSTLY BECAUSE OF  
21 THE FACT THAT YAHOO AT THE TIME WAS A U.S. COMPANY AND DEALING  
22 WITH INTERNATIONAL LAW ENFORCEMENT WAS COMPLICATED DUE TO MLAT  
23 ISSUES. SO THEY WERE REQUESTING ME NOT TO DO THAT.

24 HOWEVER, I ALSO TALKED ABOUT -- AGENT YESENSKY AND I HAD  
25 TALKED ABOUT A TRIP TO THE PHILIPPINES TO TALK TO THE

1 PHILIPPINE NATIONAL POLICE AS PART OF AN INDUSTRY -- FACEBOOK  
2 AND OTHER COMPANIES WERE GOING AS WELL -- TO TALK ABOUT CHILD  
3 SEXUAL ABUSE INVESTIGATIONS. SO THAT WAS OKAY.

4 I ALSO GAVE AGENT YESENSKY A HEADS-UP THAT WE WERE  
5 BEGINNING AN INVESTIGATION OF A NEW PHILIPPINES WEBCAM CASE AND  
6 NOTIFIED HIM THAT WE WOULDN'T BE ABLE TO SHARE ANYTHING UNTIL  
7 WE'D FINISHED, BUT WANTED HIM TO BE AWARE OF THAT.

8 FINALLY, I ENDED WITH A REQUEST FOR CONTACTS WITH THE  
9 UNITED KINGDOM'S NATIONAL CRIME AGENCY SO I COULD OBTAIN  
10 FEEDBACK FOR PRIOR REFERRALS, SIMILAR TO WHAT WE HAD DONE WITH  
11 U.S. AGENCIES.

12 Q. OKAY. SO I'M GOING TO ASK YOU ABOUT THE SECOND PARAGRAPH.

13 DID YOU DISCLOSE ANY SPECIFIC INFORMATION ABOUT YAHOO  
14 USERS IN THAT PARAGRAPH?

15 A. NO, JUST THE FACT THAT WE HAD BEGUN A NEW INVESTIGATION.

16 Q. OKAY.

17 THE COURT: CAN I ASK, THE NEW PHILIPPINES CASE, IS  
18 THAT A TOTALLY SEPARATE PHILIPPINES WEBCAM INVESTIGATION? OR  
19 IS THAT JUST ANOTHER INDIVIDUAL WHO WAS BEING INVESTIGATED AS  
20 PART OF THE PHILIPPINES WEBCAM CASE IN THIS CRIMINAL CASE?

21 THE WITNESS: YEAH. SO THIS -- I WAS REFERRING TO IN  
22 THIS CASE A, ANOTHER SORT OF LARGE-SCALE INVESTIGATION. THIS  
23 WAS EVENTUALLY GOING TO BECOME THE THIRD REFERRAL WE DID IN  
24 JANUARY OF 2016.

25 BUT IT WASN'T AN INDIVIDUAL PERSON. IT WAS A SORT OF NEXT

1 COLLECTION OF BUYERS AND SELLERS IN THAT SORT OF ACTIVITY.

2 THE COURT: OKAY. SO THIS IS PART OF OPERATION  
3 SWIFT TRAVELER?

4 MS. HARRIS: NO, YOUR HONOR. IT WAS PART OF THE  
5 ECIT'S INTERNAL INVESTIGATION.

6 OPERATION SWIFT TRAVELER WAS AN FBI INVESTIGATION THAT WAS  
7 CONDUCTED BY THE FBI. THEY WERE NOT COLLABORATING.

8 THE COURT: OKAY. I'M NOT BEING PRECISE.

9 BUT THE PHILIPPINES WEBCAM INVESTIGATION THAT STARTED WITH  
10 THE FIRST REPORTING, OR FIRST CYBERTIPS BEING FILED IN  
11 SEPTEMBER OF 2014, I GUESS THIS IS JUST THE -- THIS IS PERHAPS  
12 A THIRD TRANCHE THAT GETS FILED IN JANUARY OF 2016. IS THAT  
13 WHAT THIS IS PERHAPS REFERRING TO?

14 THE WITNESS: THAT'S CORRECT.

15 THE COURT: ALL RIGHT. THANK YOU.

16 GO AHEAD.

17 BY MS. HARRIS:

18 Q. SO THIS IS BATES 1650. GO AHEAD AND TAKE A READ OF THAT,  
19 ALSO DEFENSE EXHIBIT RR.

20 (PAUSE IN PROCEEDINGS.)

21 THE WITNESS: OKAY.

22 BY MS. HARRIS:

23 Q. SO I WANTED TO ASK YOU, YOU SAY HERE -- TOWARDS THE BOTTOM  
24 OF THE FIRST PARAGRAPH, YOU REFERENCE A COMMON GOAL. WHAT DID  
25 YOU MEAN BY THAT?

1 A. SO THIS WAS AN E-MAIL THAT I HAD SENT TO AGENT YESENSKY,  
2 AS WELL AS MY COUNTERPART AT WESTERN UNION, WESTERN UNION BEING  
3 THE MONEY REMITTING SERVICE.

4 SO I WAS INTRODUCING THEM BECAUSE I HAD TALKED TO MY  
5 COUNTERPART THERE AND HE HAD INDICATED THAT THEY WERE ALSO  
6 SEEING THEIR PLATFORM BEING ABUSED FOR THE PURPOSES OF  
7 REMITTANCES AND PAYMENTS AROUND CHILD SEXUAL ABUSE WEBCAM  
8 STREAMING.

9 SO I WANTED TO INTRODUCE THE TWO JEFFS.

10 AND THE COMMON GOAL I REFER TO IS THE ESSENTIAL --  
11 ESSENTIALLY THE REMOVAL OR THE STOPPING OF ONLINE PLATFORMS  
12 BEING USED FOR THE SALE OF CHILD SEXUAL ABUSE MATERIAL.

13 Q. OKAY. WESTERN UNION IS ANOTHER PAYMENT PROCESSING  
14 SERVICE; IS THAT CORRECT?

15 A. THAT'S CORRECT. THEY'RE SIMILAR TO XOOM.

16 Q. I SEE. THANK YOU.

17 SO THIS IS BATES 1652 THROUGH 1653, ALSO DEFENSE  
18 EXHIBIT RR.

19 TAKE A LOOK AT THAT. LET ME KNOW IF YOU NEED ME TO FLIP  
20 THE PAGE.

21 A. YOU CAN FLIP THE PAGE, PLEASE.

22 Q. (INDICATING.)

23 A. OKAY.

24 Q. SO WHAT'S HAPPENING IN THIS E-MAIL?

25 A. SO I WAS SENDING AN E-MAIL TO GUILLERMO GALARZA, WHO WAS

1 THE, I BELIEVE THE TRAINING COORDINATOR FOR ICMEC, ICMEC  
2 MEANING INTERNATIONAL CENTER FOR MISSING AND EXPLOITED  
3 CHILDREN, KIND OF AN INTERNATIONAL ANALOG TO NCMEC IN SOME  
4 WAYS, AS WELL AS AGENT YESENSKY.

5 THIS WAS IN RELATION TO THE PHILIPPINES TRIP WE HAD  
6 DISCUSSED PREVIOUSLY WHERE WE WERE GOING TO BE PARTICIPATING IN  
7 A CONFERENCE AROUND CHILD SEXUAL EXPLOITATION, PROVIDING  
8 INDUSTRY PRESENTATIONS TO MEMBERS OF THE PHILIPPINE NATIONAL  
9 POLICE.

10 AND AS I MENTION IN THE SECOND PARAGRAPH HERE, WHAT I WAS  
11 GOING TO BE DISCUSSING WAS AN OVERVIEW OF OUR PRODUCTS, SO HOW  
12 OUR PRODUCTS WORKED, AND SPECIFICALLY WHICH PRODUCTS WERE  
13 RELEVANT FOR CHILD SAFETY AND CHILD EXPLOITATION, OUR PROCESS  
14 OF REPORTING CHILD SAFETY CYBERTIPS, QUESTIONS AROUND LEGAL  
15 DISCLOSURE, ESPECIALLY INTERNATIONAL ISSUES, AND THEN A CASE  
16 STUDY OF THE PHILIPPINES WEBCAM INVESTIGATION.

17 Q. SO WHEN YOU SAY "CASE STUDY OF THE PHILIPPINES WEBCAM  
18 INVESTIGATION," WHAT DOES THAT MEAN?

19 A. SO BECAUSE WE WERE PRESENTING IN FRONT OF A FILIPINO  
20 AUDIENCE, PHILIPPINE NATIONAL POLICE, THAT WAS A VERY TIMELY  
21 AND RELEVANT CASE STUDY FOR THE AUDIENCE THAT ENCOMPASSED ALL  
22 OF THE AREAS I DISCUSSED, SO THE PRODUCT OVERVIEW, THE CHILD  
23 SAFETY REPORTING, LEGAL DISCLOSURE. IT SORT OF END-TO-END  
24 DESCRIBED THE PROCESS OF WHAT PRIVATE INDUSTRY DOES IN RESPONSE  
25 TO CHILD SEXUAL ABUSE REPORTING.

1 SO THAT'S WHY.

2 Q. DID YOU DISCLOSE ANY USER DATA OR CONDUCT DURING THAT CASE  
3 STUDY?

4 A. NO, WE DID NOT.

5 Q. DID YOU DISCLOSE ANY OTHER NON-PUBLIC INFORMATION ABOUT  
6 YAHOO USERS DURING THE CASE STUDY PRESENTATION?

7 A. NO, WE DID NOT.

8 Q. AND WHY -- WHY WOULD THE COMPANY SEND YOU TO THIS TYPE OF  
9 A CONFERENCE?

10 A. A COUPLE REASONS. ONE, SOME OF OUR PEER COMPANIES WERE  
11 GOING AND -- LIKE FACEBOOK WAS THERE, XOOM WAS THERE.

12 THE COMPANY KIND OF PREFERS TO BE IN THE MIDDLE OF THE  
13 PACK WHEN IT COMES TO THESE TYPE OF INITIATIVES. WE DON'T WANT  
14 TO BE THE FIRST THERE, BUT WE ALSO DON'T WANT TO BE THE LAST  
15 THERE.

16 ADDITIONALLY, THE COMPANY, AS I MENTIONED BEFORE, WAS  
17 UPSET BY THE FACT THAT THIS AWFUL CHILD ABUSE STREAMING AND  
18 SORT OF LIVE STREAMED ABUSE WAS HAPPENING ON THE PLATFORMS THAT  
19 WE WERE OFFERING TO OUR USERS, AND THEY WERE SUPPORTIVE OF  
20 EFFORTS THAT WOULD TRY TO REDUCE THAT AND STOP IT.

21 Q. OKAY. AND THE DATE OF THIS E-MAIL IS AUGUST 24TH, 2015.

22 A. THAT'S CORRECT.

23 Q. DO YOU RECALL WHEN THE CONFERENCE WAS?

24 A. I -- IT WAS EITHER LATE -- OH, IT'S RIGHT THERE. IT WOULD  
25 HAVE BEEN IN EARLY SEPTEMBER OF 2015.

1 Q. OKAY. SO THIS WAS AFTER YOU HAD ALREADY FILED TWO -- THE  
2 RESULTS OF TWO OF YOUR INTERNAL INVESTIGATIONS; IS THAT  
3 CORRECT?

4 A. THAT'S CORRECT.

5 Q. DO YOU RECALL -- WELL, EXCUSE ME.

6 DID YOU MEET WITH ANY LAW ENFORCEMENT PERSONNEL IN  
7 RELATION TO ECIT'S INVESTIGATIONS AT THIS CONFERENCE?

8 A. SO WE -- JEFF YESENSKY WAS THERE. THERE WERE MEMBERS OF  
9 THE PNP, THE PHILIPPINE NATIONAL POLICE, AS WELL WHERE WE  
10 DISCUSSED, IN BROAD TERMS, HOW THE INVESTIGATION WORKED AND  
11 WHAT THE MOTIVATION OF OUR COMPANY WAS AND WHY WE WERE DOING  
12 IT.

13 I DON'T BELIEVE WE TALKED ABOUT SPECIFICS.

14 BUT ONE OF THE PURPOSES OF OUR GOING TO THIS CONFERENCE  
15 WAS TO EDUCATE THE PNP ON OUR OVERALL PROCESS, BECAUSE WE SAW  
16 THIS AS AN AREA THAT WASN'T GOING TO GO AWAY ANY TIME SOON AND  
17 WE WANTED TO MAKE SURE THAT THEY UNDERSTOOD, IF THEY DID GET  
18 CYBERTIPS FROM NCMEC -- WHICH WE KNEW THEY WERE DOING BECAUSE  
19 SOME OF THEM WERE BEING AUTO FORWARDED THERE -- WHAT THOSE  
20 MEANT AND WHAT THE SORT OF CONTEXT WAS.

21 Q. DO YOU RECALL PROVIDING ANY NON-PUBLIC INFORMATION ABOUT  
22 YAHOO USERS TO THE LAW ENFORCEMENT AGENTS THAT YOU MET WITH AT  
23 THE CONFERENCE?

24 A. NO, I DO NOT.

25 Q. THIS IS BATES 1680, ALSO OF DEFENSE EXHIBIT RR.



1 GO AHEAD AND TAKE A LOOK AT THAT AND LET ME KNOW WHEN  
2 YOU'RE READY.

3 (PAUSE IN PROCEEDINGS.)

4 THE WITNESS: OKAY. I'M READY.

5 BY MS. HARRIS:

6 Q. WHAT'S HAPPENING IN THIS E-MAIL?

7 A. THIS IS AN E-MAIL THAT I SENT TO AGENT YESENSKY. WE HAD,  
8 IN OUR PRIOR REFERRAL -- ACTUALLY, THIS WAS THE JANUARY, OR  
9 FEBRUARY RATHER OF 2016, THE THIRD SUPPLEMENT, PHILIPPINE  
10 WEBCAM SUPPLEMENT.

11 WE INCLUDED A -- ONE OF THE BUYERS WE HAD INCLUDED IN THAT  
12 CASE WAS A GERMAN CITIZEN RESIDING IN THE PHILIPPINES WHO  
13 OPERATED AN ORPHANAGE. THIS INDIVIDUAL -- I BELIEVE THE FBI  
14 SENT THE INFORMATION ON THAT INDIVIDUAL THAT WE PROVIDED TO THE  
15 GERMAN BKA, WHICH IS THE GERMAN FEDERAL POLICE, AND THE GERMAN  
16 FEDERAL POLICE REACHED OUT TO MYSELF AND OUR LEGAL DEPARTMENT  
17 AND WERE ASKING QUESTIONS ABOUT HOW TO OBTAIN CONTENTS OF  
18 ACCOUNTS VIA THEIR OWN LEGAL PROCESS.

19 BECAUSE OF THE WAY THAT YAHOO AT THE TIME WAS A U.S.  
20 COMPANY -- IT HAD AN IRELAND AFFILIATE SUBSIDIARY, BUT WE  
21 DIDN'T RESPOND DIRECTLY TO GERMAN LEGAL PROCESS FOR CONTENT  
22 BECAUSE IT WASN'T ALLOWED UNDER OUR POLICIES.

23 SO I WAS INDICATING THAT -- TO AGENT YESENSKY THAT THEY  
24 WOULD HAVE TO SERVE IRELAND WITH AN MLAT, AND INSTEAD WAS  
25 ASKING, BECAUSE THE FBI WAS AWARE OF THESE -- OF THIS

1 INDIVIDUAL AND THESE ACCOUNTS, IF THE FBI COULD OBTAIN -- GET A  
2 SEARCH WARRANT, A U.S. SEARCH WARRANT, U.S. LEGAL PROCESS  
3 INSTEAD OF THE MLAT PROCESS.

4 Q. OKAY. AND WHY WOULD YOU SUGGEST THAT?

5 A. MY UNDERSTANDING -- WELL, A COUPLE REASONS.

6 MY UNDERSTANDING WAS THAT, AGAIN, LIKE I MENTIONED  
7 EARLIER, I THINK THE MLAT PROCESS IS VERY TIME INTENSIVE. IT  
8 CAN TAKE UP TO A YEAR OR SO TO GET A RESPONSE. IT'S VERY  
9 FRUSTRATING FOR, FOR FOREIGN LAW ENFORCEMENT AND THEY TAKE  
10 THEIR FRUSTRATIONS OUT ON US AS A COMPANY EVEN THOUGH IT'S NOT  
11 OUR FAULT THAT THE MLAT PROCESS EXISTS.

12 AND WE ALSO WERE CONCERNED THAT THIS INDIVIDUAL, AS I  
13 MENTIONED, WAS OPERATING AN ORPHANAGE AND WAS BELIEVED TO BE  
14 ABUSING MANY CHILDREN IN HIS CARE, AND WE THOUGHT THAT  
15 EXPEDIENCY WOULD BE HELPFUL HERE.

16 Q. OKAY. AND AS PART OF THAT EXPEDIENT PROCESS, YOU TOLD  
17 THEM TO GET A SEARCH WARRANT; IS THAT RIGHT?

18 A. I ASKED IF THEY COULD OBTAIN A SEARCH WARRANT, CORRECT,  
19 YES.

20 Q. OKAY. AND THEN POSSIBLY SEND THE MATERIALS TO THE GERMANS  
21 ON AN LE-TO-LE BASIS. WHAT DOES THAT MEAN?

22 A. BASED ON MY UNDERSTANDING, IF -- WELL, THIS IS PARTLY ON  
23 MY UNDERSTANDING AND PARTLY WHAT OCCURRED.

24 IF LAW ENFORCEMENT IN THE UNITED STATES IS WORKING JOINTLY  
25 WITH LAW ENFORCEMENT IN ANOTHER COUNTRY, THEY HAVE THE ABILITY

1 TO SHARE INFORMATION SORT OF AGENT-TO-AGENT, SO TO SPEAK,  
2 WITHOUT USING MLATS OR OTHER ROGATORIES OR OTHER PROCESS.

3 Q. DID YOU KNOW WHETHER OR NOT THAT WAS ACTUALLY A WORKAROUND  
4 FOR AN MLAT?

5 A. NOT DIRECTLY, NO, I DID NOT.

6 Q. OKAY. AND I THINK YOU ACTUALLY SAID THAT IN YOUR THIRD  
7 PARAGRAPH. IS THAT CORRECT?

8 A. THAT'S CORRECT, YES.

9 Q. OKAY. AND ARE YOU FAMILIAR WITH HOW THIS ISSUE WAS  
10 ACTUALLY RESOLVED?

11 A. I BELIEVE -- I BELIEVE THAT THE BKA ACTUALLY DID GET THE  
12 MLAT TO IRELAND AND THEN WAITED THE AMOUNT OF TIME NECESSARY TO  
13 RECEIVE THE RESPONSE AND GOT THE INFORMATION THAT WAY.

14 Q. OKAY. THIS IS BATES 1684, ALSO OF DEFENSE EXHIBIT RR.  
15 GO AHEAD AND READ IT, PLEASE.

16 (PAUSE IN PROCEEDINGS.)

17 THE WITNESS: OKAY, YES.

18 BY MS. HARRIS:

19 Q. WHAT'S HAPPENING IN THIS E-MAIL?

20 A. SO I WAS INTRODUCING AGENT YESENSKY TO AN AGENT FROM THE  
21 DCIS, DCIS BEING THE DEFENSE CRIMINAL INVESTIGATIVE SERVICE.  
22 HE IS SOMEBODY WHO I HAD KNOWN FROM MY PRIOR GOVERNMENT  
23 SERVICE, AND HE INDEPENDENTLY REACHED OUT TO ME AND WAS TALKING  
24 ABOUT -- HE HAD MOVED INTO A CYBER ROLE WITHIN DCIS AND WAS  
25 ASKING ABOUT DIFFERENT WAYS THAT DCIS CAN START TO GET MORE

1 ACTIVE IN CYBER INVESTIGATIONS, AND SPECIFICALLY CALLED OUT  
2 HUMAN TRAFFICKING WORK THAT HE WAS HOPING TO DO.

3 I HAD MENTIONED TO HIM THAT WE HAD UNCOVERED A NUMBER OF  
4 DOD SERVICE MEMBERS AND CIVILIANS WHO WERE BUYERS IN OUR WEBCAM  
5 INVESTIGATIONS. HOWEVER, I WASN'T ABLE TO -- I TOLD HIM I  
6 COULDN'T SHARE INFORMATION WITH HIM BECAUSE WE HAVE TO GO  
7 THROUGH THE NCMEC PROCESS.

8 SO THIS, THIS INTRODUCTION WAS TO -- SO JEFF COULD TALK TO  
9 THE AGENT FROM DCIS AND POTENTIALLY SHARE THAT INFORMATION OF  
10 THEIR OWN ACCORD.

11 Q. OKAY. I BELIEVE YOU SAID, THOUGH, THAT YOU WERE NOT  
12 ALLOWED TO SHARE CASE REFERRALS WITH ANYONE OUTSIDE OF NCMEC?

13 A. THAT'S CORRECT, YES.

14 Q. AND THAT'S WRITTEN IN THE E-MAIL?

15 A. YES.

16 Q. AND WHY WOULD YOU MAKE A, AN INTRODUCTION BETWEEN  
17 AGENT YESENSKY AND THIS ADDITIONAL INDIVIDUAL?

18 A. SO THIS INDIVIDUAL HAD COME TO ME AND ASKED AND  
19 SPECIFICALLY SAID THAT HE WANTED HIS AGENCY TO GET INVOLVED IN  
20 HUMAN TRAFFICKING WORK.

21 SO THIS IS -- THIS WAS -- IN MY OPINION, THIS WAS AN AGENT  
22 WHO MIGHT BE IN A POSITION TO TAKE ACTION ON SOME OF THE  
23 INFORMATION THAT WE HAD PROVIDED IN OUR REFERRALS, AND AS I  
24 MENTIONED EARLIER, THAT FEEDBACK IS VERY IMPORTANT TO US.

25 SO I WANTED TO MAKE THAT INTRODUCTION SO, YOU KNOW, THEY

1 COULD ESSENTIALLY WORK IT OUT WITHOUT HAVING TO -- YOU KNOW, WE  
2 WOULDN'T BE ABLE TO DO ANY DISCLOSURES TO HIM, BUT THEY COULD  
3 MAKE THE INTRODUCTION THEMSELVES.

4 Q. I SEE. THANK YOU.

5 THIS IS BATES 1685, ALSO OF DEFENSE EXHIBIT RR.

6 GO AHEAD AND HAVE A READ OF THAT.

7 (PAUSE IN PROCEEDINGS.)

8 THE WITNESS: OKAY.

9 BY MS. HARRIS:

10 Q. THIS E-MAIL WAS NOT WRITTEN BY YOU; CORRECT?

11 A. THAT'S CORRECT.

12 Q. BUT YOU'RE CC'D ON IT? OR YOU WERE A RECIPIENT OF IT?

13 A. YES, I WAS.

14 Q. OKAY. WHAT'S YOUR UNDERSTANDING OF THE INFORMATION  
15 COMMUNICATED HERE?

16 A. THIS WAS AN E-MAIL TO MYSELF AND MY COUNTERPART AT XOOM  
17 FROM AGENT YESENSKY, AND AGENT YESENSKY WAS PROVIDING THE  
18 FEEDBACK ON SOME OF THE PRIOR REFERRALS THAT WE HAD MADE. AS I  
19 DISCUSSED EARLIER, THAT'S SOMETHING THAT WE HAD OFTEN  
20 REQUESTED.

21 Q. OKAY. HE MENTIONS, IN THE SECOND LINE, THAT HE COULDN'T  
22 RELEASE MUCH SINCE IT'S AN ONGOING INVESTIGATION; RIGHT?

23 A. THAT'S RIGHT, YEAH.

24 Q. AND YOU -- WE HAD DISCUSSED PREVIOUSLY THE REASONS WHY YOU  
25 SOUGHT -- WHY YOU SOUGHT FEEDBACK FOR THESE TYPES OF

1 INVESTIGATIONS; IS THAT RIGHT?

2 A. THAT'S CORRECT, FOR THE SORT OF RESILIENCY AND WELLNESS  
3 ASPECTS, AS WELL AS THE INTERNAL SUPPORT FOR THIS TYPE OF WORK.

4 Q. THIS IS BATES 1690, ALSO OF DEFENSE EXHIBIT RR.

5 GO AHEAD AND READ IT.

6 A. OKAY.

7 Q. WHY ARE YOU REQUESTING A MUGSHOT?

8 A. AGAIN, THIS IS -- IN THE E-MAIL THAT WE HAD SEEN  
9 PREVIOUSLY WHEN I WAS SENDING THE E-MAIL TO THE CSE REPORTING  
10 OUTCOME OF THE MAILING LISTS -- SO THE LIST OF ALL THE POLICY  
11 AND LEGAL AND ENGINEERING AND MODERATION PEOPLE -- ONE OF THE  
12 THINGS THAT WE FIND SORT OF HELPS CONTEXTUALIZE THE WORK THAT  
13 THEY DO IS THAT THERE'S ACTUALLY A REAL PERSON BEHIND THE  
14 CYBERTIPS THAT GET FILED EVERY DAY, DAY IN AND DAY OUT.

15 AND MUGSHOTS ARE SOMETHING THAT, WHEN THEY ARE AVAILABLE,  
16 WE DO PROVIDE THEM IN THE E-MAILS AS AN ATTACHMENT SO  
17 INDIVIDUALS KNOW THAT THERE'S A REAL PERSON BEHIND THE ACCOUNTS  
18 THAT THEY'RE INTERACTING WITH, WHICH IS KIND OF SOBERING, I  
19 THINK, AND IT REALLY -- IT REMINDS THE STAFF THAT WORKS ON THIS  
20 THAT THERE'S REAL WORLD CONSEQUENCES TO THIS WORK AND IT'S NOT  
21 JUST, YOU KNOW, AN E-MAIL ADDRESS THAT HAS UPLOADED STUFF.  
22 IT'S A PERSON THAT UPLOADED STUFF.

23 Q. SO IT HELPS TO PUT A FACE TO THE NAME?

24 A. THAT'S EXACTLY RIGHT.

25 Q. THIS IS BATES 1693, ALSO OF DEFENSE EXHIBIT RR.

1 A. OKAY.

2 Q. OKAY. WHAT'S HAPPENING IN THIS E-MAIL?

3 A. SO THIS IS BACK IN 2014. THIS IS THE SECOND PHILIPPINES  
4 WEBCAM CASE. I WAS A LITTLE OPTIMISTIC, HOPING THAT IT WAS THE  
5 LAST PHILIPPINES WEBCAM CASE THAT WE HAD TO DO.

6 AND IT, SIMILAR TO THE E-MAIL WE REVIEWED A FEW TIMES AGO,  
7 WAS LOOKING FOR A TIME THAT WOULD BE -- THAT WOULD WORK WITH  
8 AGENT YESENSKY TO COME OUT AND DISCUSS THE REFERRAL THAT WE HAD  
9 SENT TO NCMEC.

10 Q. I SEE. SO WE HAD ALREADY DISCUSSED THIS MEETING  
11 PREVIOUSLY; IS THAT CORRECT?

12 A. THAT'S CORRECT, YES.

13 Q. THIS IS BATES 1699, ALSO OF DEFENSE EXHIBIT RR.

14 A. YES, OKAY.

15 Q. SO IN THIS E-MAIL, YOU'RE REFERRING AGENT YESENSKY AND  
16 AGENT O'CALLAGHAN TO A TOOL; CORRECT?

17 A. THAT'S CORRECT.

18 Q. WHAT TOOL WAS THAT?

19 A. IT WAS A TOOL, OPEN SOURCE TOOL CALLED  
20 DETECTINVISIBLE.COM.

21 Q. AND WHY ARE YOU REFERRING THEM TO THIS TOOL?

22 A. THIS WAS A THIRD PARTY TOOL THAT ACTUALLY XOOM HAD  
23 NOTIFIED US ABOUT, WE WEREN'T AWARE OF IT, THAT LETS THE USER  
24 OF THE TOOL VIEW THE PUBLICLY AVAILABLE PROFILE PICTURE OF A  
25 YAHOO MESSENGER USER.

1 SO YAHOO MESSENGER -- I MAY HAVE MENTIONED IN THE LAST  
2 SESSION, BUT YAHOO MESSENGER OPERATES IN SUCH A WAY THAT  
3 THERE'S A PROFILE PICTURE FOR EACH USER, AND IF YOU ARE LOOKING  
4 FOR SOMEBODY TO ADD AS A BUDDY ON THE CHAT SYSTEM, THE PROFILE  
5 PICTURE IS PROVIDED SO THE PERSON WHO IS CONSIDERING ADDING  
6 THAT INDIVIDUAL CAN DECIDE WHETHER OR NOT TO ADD THEM BASED ON  
7 A PICTURE.

8 WE HAD FOUND THAT MANY OF THE SELLER ACCOUNTS IN THE  
9 PHILIPPINES HAD ACTUALLY UTILIZED CHILD SEXUAL ABUSE IMAGERY,  
10 LIKE SPECIFICALLY CHILDREN IN THE PHILIPPINES WHO WERE BEING  
11 ABUSED, AS THEIR PROFILE PICTURE. OUR THOUGHT WAS THAT THIS  
12 WAS A MEANS FOR SOLICITING OR BASICALLY OFFERING FOR SALE THE  
13 CHILDREN.

14 SO I WAS DIRECTING THESE TWO AGENTS TO THIS TOOL WHICH  
15 COULD BE USED TO VIEW THESE PUBLICLY AVAILABLE PICTURES WHICH  
16 ARE OFFERED DURING THE YAHOO MESSENGER PROTOCOL.

17 Q. I SEE. SO LET ME MAKE SURE THAT I UNDERSTOOD THIS  
18 CORRECTLY. YOU SAID THAT THEY WERE USING THE PROFILE PICTURES  
19 TO ADVERTISE IN; IS THAT CORRECT?

20 A. WELL, SO WE DON'T KNOW BECAUSE WE DIDN'T ASK THE SELLERS.

21 BUT WE NOTICED THAT A LARGE NUMBER OF THE ACCOUNTS IN THE  
22 PHILIPPINES WHO WERE OFFERING THE CHILD ABUSE, EITHER THE  
23 PICTURES OR THE VIDEO OR THE LIVE STREAMED ABUSE FOR SALE, HAD  
24 PROFILE PICTURES OF CHILD PORNOGRAPHY, OR IN SOME CASES THEY  
25 MAY BE SCANTILY CLAD PICTURES OF CHILDREN THAT WERE NOT THE



1 DEFINITION OF CHILD PORNOGRAPHY, BUT WERE STILL, YOU KNOW,  
2 DEMONSTRATING ACCESS TO CHILDREN ESSENTIALLY.

3 WE THINK THIS WAS A WAY TO SIGNAL TO POTENTIAL BUYERS THAT  
4 THEY ESSENTIALLY HAD THIS MATERIAL AVAILABLE, AND WHEN THE  
5 BUYER WAS CONSIDERING ADDING THIS SELLER TO THEIR BUDDY LIST ON  
6 YAHOO MESSENGER, THIS, WE THINK, WAS A POTENTIAL WAY FOR THEM  
7 TO DECIDE, DO THEY WANT TO MAKE THAT KIND OF SHARE OR NOT?

8 Q. I SEE. SO THIS IS A PUBLICLY AVAILABLE TOOL?

9 A. IT WAS. I'M NOT SURE IF IT'S STILL AROUND.

10 Q. DID YAHOO CREATE THIS TOOL?

11 A. NO, WE DID NOT.

12 Q. AND IS THAT WHAT YOU MEANT BY OPEN SOURCE TOOL?

13 A. YES. THE ECIT TEAM, AS PART OF THEIR INVESTIGATIONS, USES  
14 NOT ONLY YAHOO DATA, LIKE I DESCRIBED EARLIER, ACCOUNTS AND  
15 PHONE NUMBERS AND E-MAIL ADDRESSES AND THINGS LIKE THAT, BUT WE  
16 ALSO UTILIZE OPEN, WHAT WE CALL OPEN SOURCE INFORMATION. SO,  
17 FOR EXAMPLE, FACEBOOK PROFILES, LINKEDIN PROFILES, PERSONAL  
18 WEBSITES, BLOGS, INFORMATION LIKE THAT THAT HELPS US  
19 CONTEXTUALIZE WHAT WE SEE ON OUR PLATFORMS.

20 SO THESE ARE -- THESE ARE TOOLS, THEY'RE SERVICES THAT ARE  
21 NOT OPERATED BY US, BUT WE UTILIZE THEM BECAUSE THEY ARE  
22 PUBLICLY AVAILABLE AND PROVIDE CONTEXT FOR INVESTIGATIONS.

23 Q. I SEE. THIS IS BATES 1700, ALSO OF DEFENSE EXHIBIT RR.

24 GO AHEAD AND READ IT.

25 A. OKAY, YES.

1 Q. SO IT LOOKS LIKE THIS E-MAIL ALSO REFERS TO THE MLAT  
2 PROCESS.

3 A. IT DOES, YES.

4 Q. OKAY. AND WHAT IS IT THAT YOU'RE CONVEYING IN THIS  
5 E-MAIL?

6 A. IF I RECALL, AGENT YESENSKY HAD CALLED ME AND ASKED ABOUT  
7 OUR POLICIES FOR SHARING E-MAIL CONTENT WITH THE  
8 UNITED KINGDOM. I DON'T RECALL EXACTLY WHY HE WAS ASKING, BUT  
9 IT WAS LIKELY IN RELATION TO ONE OF THE BUYERS LOCATED IN THE  
10 U.K.

11 THE COMPANY POLICY WAS TO ONLY PROVIDE E-MAIL CONTENT IN  
12 RESPONSE TO MLATS. SO BECAUSE HE WAS ASKING FOR THE POLICY AND  
13 OUR PROCESS, I INDICATED THAT AN MLAT WAS THE WAY TO -- WAS  
14 WHAT THE U.K. WOULD NEED, SO AN ALTERNATIVE MIGHT BE TO GET A  
15 U.S. SEARCH WARRANT SERVED BY THE FBI INSTEAD OF THE MLAT  
16 PROCESS.

17 Q. AND WAS THAT FOR THE SAME REASONS THAT WE HAD DISCUSSED  
18 BEFORE WITH THE OTHER E-MAIL REFERRING TO THE MLAT?

19 A. THAT'S CORRECT, YES.

20 Q. DO YOU RECALL THE ACTUAL OUTCOME OF THIS MLAT REQUEST?

21 A. I DON'T EVEN ACTUALLY RECALL WHAT -- THE ACCOUNT IN  
22 QUESTION.

23 Q. OKAY. SO THIS IS BATES 1702 THROUGH 1712. THIS IS AN  
24 E-MAIL CHAIN OF SEVERAL E-MAILS.

25 SO I'M GOING TO -- IF I CAN APPROACH, YOUR HONOR?

1 THE COURT: GO AHEAD, PLEASE.

2 BY MS. HARRIS:

3 Q. I'LL HAND THIS TO YOU. GO AHEAD AND TAKE A QUICK READ OF  
4 IT AND THEN I'LL DIRECT YOU TO SPECIFIC PORTIONS OF THE E-MAIL  
5 (HANDING) .

6 (PAUSE IN PROCEEDINGS.)

7 THE WITNESS: OKAY, YES (HANDING) .

8 BY MS. HARRIS:

9 Q. SO I'M GOING TO DIRECT YOUR ATTENTION TO BATES 1708 AND  
10 1709. THIS APPEARS TO BE AN E-MAIL FROM YOU SENT WEDNESDAY,  
11 THE 6TH OF JULY, 2016; CORRECT?

12 A. THAT'S CORRECT.

13 Q. OKAY. WHY DON'T YOU EXPLAIN WHAT'S HAPPENING IN THIS  
14 E-MAIL?

15 A. YEAH. THIS IS IN RESPONSE TO AN E-MAIL THAT ACTUALLY I  
16 RECEIVED FROM THE AFP, THE AUSTRALIAN FEDERAL POLICE, A FEW  
17 PAGES BACK, I THINK. THE AFP HAD REACHED OUT AND HAD TOLD --  
18 THIS AGENT, AGENT SEIP, HAD BEEN INTRODUCED I THINK TO  
19 AGENT YESENSKY FROM THE FBI AND HAD REACHED OUT TO ME AND  
20 STATED THAT HE HAD HEARD ABOUT THE OPERATION SWIFT TRAVELER  
21 INVESTIGATIONS AND WANTED TO KNOW HOW THE AFP COULD DEVELOP A  
22 RELATIONSHIP WITH YAHOO FOR SIMILAR TYPES OF REFERRALS.

23 Q. OKAY. SO ON THE SECOND PARAGRAPH, YOU MENTIONED THE  
24 BENEFIT WITH JEFF AND THE FBI OF FEEDBACK.

25 HAVE WE DISCUSSED THIS BENEFIT PREVIOUSLY DURING YOUR

1 TESTIMONY?

2 A. WE HAVE, AND I ACTUALLY SPECIFICALLY SAY, "IT JUSTIFIES  
3 OUR EFFORTS TO OUR MANAGEMENT, AND THE NEWS IS A HUGE MORALE  
4 BOOST FOR OUR FRONT-LINE REVIEWERS WHO SPEND DAY IN AND DAY OUT  
5 LOOKING AT CHILD ABUSE IMAGES TO REPORT THEM. WE DO NOT TALK  
6 ABOUT THESE SUCCESSES OUTSIDE OF YAHOO AS WE TRY TO AVOID  
7 PUBLICITY AT ALL COSTS."

8 SO, YES, THAT WAS CONSISTENT WITH WHAT WE HAD DISCUSSED.

9 Q. AND THEN YOU GO ON TO JUST ASK HIM FOR FEEDBACK AS TO WHAT  
10 HAPPENS WITH REFERRALS; IS THAT CORRECT?

11 A. THAT'S CORRECT, YES.

12 Q. AND, AGAIN, WHY DID YOU ASK FOR THAT FEEDBACK?

13 A. AGAIN, BECAUSE THAT -- THAT SORT OF GOOD NEWS, THE REAL  
14 WORLD OUTCOMES OF THE DIFFICULT WORK THAT THESE TEAMS ENGAGE IN  
15 IS HELPFUL FOR BOTH RAISING AWARENESS IN THE COMPANY OF CHILD  
16 ABUSE IMAGES AND ISSUES ASSOCIATED WITH THOSE, AS WELL AS THE  
17 SORT OF THE MORALE BOOST AND THE WELLNESS AND RESILIENCY  
18 ASPECTS FOR OUR REVIEWERS.

19 Q. IF YOU HAD NOT RECEIVED THE FEEDBACK THAT YOU REQUESTED,  
20 WOULD YOU HAVE REFUSED TO WORK WITH HIM?

21 A. NO.

22 Q. THIS IS BATES 1794, ALSO OF DEFENSE EXHIBIT RR.

23 A. OKAY.

24 Q. SO CAN YOU EXPLAIN WHAT'S HAPPENING IN THIS E-MAIL?

25 A. THIS IS AN E-MAIL FROM AGENT YESENSKY AND HE WAS ASKING

1 FOR A, A WORD DOCUMENT VERSION OF THE PDF REPORT THAT WE  
2 PROVIDED TO NCMEC. MY UNDERSTANDING WAS THAT HE WANTED THIS SO  
3 THAT HE COULD, ESSENTIALLY, COPY THE E-MAIL ADDRESSES OUT AND  
4 PROVIDE THEM BACK TO US IN LEGAL PROCESS.

5 Q. OKAY. SO JUST TO CLARIFY, THIS WAS INFORMATION THAT YOU  
6 HAD ALREADY FILED WITH NCMEC?

7 A. THAT'S RIGHT, YES.

8 Q. HE JUST ASKED FOR IT IN A DIFFERENT FORMAT?

9 A. THAT'S CORRECT.

10 Q. THIS IS BATES 2029 THROUGH 2032, ALSO OF DEFENSE  
11 EXHIBIT RR.

12 A. OKAY.

13 Q. HERE'S THE REST OF IT (INDICATING).

14 A. OKAY, YEAH.

15 Q. SO DIRECTING YOUR ATTENTION TO THE FIRST E-MAIL IN BATES  
16 2029, WHAT'S HAPPENING IN THAT E-MAIL?

17 A. SO THIS WAS BACK IN DECEMBER OF 2014. THIS IS IN REGARDS  
18 TO THE SECOND PHILIPPINE WEBCAM INVESTIGATION THAT WE HAD SENT  
19 TO NCMEC. I WAS TRYING TO -- I MAY HAVE -- WE MAY HAVE  
20 ACTUALLY SCHEDULED THE DATE OF THE MEETING, AND I WAS NOTIFYING  
21 THEM THAT EVEN THOUGH I WOULD BE BRINGING COURTESY HARD COPIES  
22 OF THE REPORT AND CHART, THAT THEY NEEDED TO GET FROM NCMEC THE  
23 SUPPLEMENTAL DATA THAT WE PROVIDED IN RELATION TO THE CYBERTIPS  
24 BECAUSE THAT WAS OUR OFFICIAL DATA DISCLOSURE MECHANISM.

25 Q. SO YOU'RE REFERRING THEM TO NCMEC FOR BOTH THE CYBERTIPS

1 AND THE SUPPLEMENTAL REPORT WHICH WAS ALREADY FILED?

2 A. THAT'S CORRECT.

3 Q. THANK YOU.

4 THIS IS BATES 2063, ALSO OF DEFENSE EXHIBIT RR.

5 A. YES.

6 Q. WHAT'S HAPPENING IN THIS E-MAIL?

7 A. THIS WAS IN RELATION TO THE THIRD INVESTIGATION, SO IN  
8 JANUARY OF 2016, PROBABLY I THINK A WEEK BEFORE, OR TWO WEEKS  
9 BEFORE THE ACTUAL PHYSICAL IN-PERSON MEETING WE HAD.

10 I WAS NOTIFYING AGENT YESENSKY THAT WE HAD SENT THE LATEST  
11 CASE TO NCMEC, INCLUDING THE REPORT, THE CHARTS, AND THE  
12 ACCOUNTS, AND WAS ASKING IF HE WAS ABLE TO OBTAIN THEM FROM  
13 NCMEC.

14 Q. OKAY. SO, AGAIN, REFERRING AGENT YESENSKY TO NCMEC FOR  
15 INFORMATION THAT YOU HAD FILED?

16 A. THAT'S RIGHT.

17 Q. THIS IS DEFENSE EXHIBIT SS, BATES 2071 THROUGH 2073.

18 A. OKAY.

19 Q. (INDICATING.)

20 A. OKAY.

21 Q. (INDICATING.)

22 A. OKAY.

23 Q. WHAT IS YOUR UNDERSTANDING OF WHAT'S HAPPENING IN THIS  
24 E-MAIL?

25 A. I RECEIVED AN E-MAIL IN MARCH OF 2015 FROM AN FBI AGENT,

1 AGENT BLETSIS. THEY HAD SERVED LEGAL PROCESS, SEARCH WARRANTS,  
2 ON YAHOO, AND SHE RECEIVED A RESPONSE REGARDING OUR USER NOTICE  
3 POLICY.

4 SO WE HAVE A POLICY WHERE WE WILL VOLUNTARILY PROVIDE USER  
5 NOTICE, UNLESS ORDERED BY REGULATION OR NON-DISCLOSURE ORDER  
6 FROM A COURT, TO OUR USERS TO NOTIFY THEM THAT THEY WERE THE  
7 TARGET OF A GOVERNMENT REQUEST.

8 WE HAVE EXCEPTIONS, ONE OF THOSE BEING AN EXCEPTION FOR  
9 CHILD ABUSE INVESTIGATIONS, THAT WE PROVIDE A VOLUNTARY DELAY  
10 OF NOTIFICATION.

11 AND SO THE AGENT WAS -- HAD SENT THE SEARCH WARRANT AND --  
12 OR WARRANTS IN AND WAS CONFUSED WHY THEY GOT THIS RESPONSE BACK  
13 BECAUSE IT WAS A CHILD ABUSE INVESTIGATION.

14 SO IN MY RESPONSE TO HER, I WAS INDICATING THAT -- I WAS  
15 DIRECTING HER TO THE LANGUAGE OF THE POLICY REGARDING CALLING  
16 OUT THAT THIS NEEDED TO BE -- THE AGENT NEEDED TO SPECIFY THIS  
17 WAS A CHILD ABUSE INVESTIGATION IN ORDER FOR US TO, TO WAIVE  
18 OUR NOTICE REQUIREMENT, ESSENTIALLY.

19 I ALSO SUGGESTED THAT THE BEST BET IN ANY EVENT IS TO  
20 ALWAYS GET A NON-DISCLOSURE ORDER AND THAT WAY WE DON'T HAVE  
21 THE ABILITY TO NOTIFY, AND THAT'S SORT OF THE PREFERRED METHOD  
22 FROM OUR LEGAL TEAM.

23 Q. AND WHAT IS YOUR UNDERSTANDING OF WHO ISSUES  
24 NON-DISCLOSURE ORDERS?

25 A. A JUDGE.

1 Q. OKAY. SO THAT WOULD BE JUST ANOTHER TYPE OF LEGAL PROCESS  
2 THAT THEY COULD GET?

3 A. THAT'S CORRECT, YES.

4 Q. SO THIS IS BATES 2095 THROUGH 2101, ALSO OF DEFENSE  
5 EXHIBIT SS, AND I'M JUST GOING TO DIRECT YOUR ATTENTION TO  
6 BATES 2096, OKAY, AND 2097.

7 A. OKAY.

8 Q. OKAY. SO IN THE E-MAIL DATED FEBRUARY 14TH, 2017, YOU  
9 ASKED PETER KAUPP FOR A MUGSHOT; IS THAT CORRECT?

10 A. THAT'S CORRECT.

11 Q. AND WHAT WAS HIS RESPONSE TO YOU?

12 A. HE STATED THAT HIS OFFICE DIDN'T -- HAD A POLICY ABOUT NOT  
13 RELEASING INFORMATION TO THE PUBLIC, BUT HE WOULD NOTIFY ME ON  
14 ANY SORT OF COURT ACTIVITY.

15 Q. AND WHAT WAS YOUR RESPONSE TO THAT?

16 A. I SAID NO PROBLEM AND THANKED HIM.

17 Q. AND THEN THERE'S AN E-MAIL ABOVE THAT. WHAT'S THAT?

18 A. SO THAT WAS THE -- ABOUT SEVEN MONTHS LATER, THE AGENT HAD  
19 SENT AND LET US KNOW OF AN OUTCOME, SO FEEDBACK FROM THE PRIOR  
20 REFERRAL. HE DIRECTED US TO A PUBLIC -- A PRESS RELEASE FROM  
21 THE VIRGINIA FEDERAL COURT.

22 Q. OKAY. SO IT WAS YOUR UNDERSTANDING THAT THIS WAS PUBLICLY  
23 AVAILABLE INFORMATION?

24 A. YES, THAT'S CORRECT.

25 Q. AND IN YOUR E-MAIL RESPONDING, HOW DO YOU RESPOND TO THAT?



1 A. SO I THANKED HIM FOR THE UPDATE AND I WAS ENTHUSIASTIC  
2 ABOUT THE OUTCOME AND SENT CONGRATULATIONS.

3 Q. OKAY. MY QUESTIONS TODAY, HAVE THEY COVERED EVERY DETAIL  
4 THAT YOU KNOW ABOUT YAHOO'S INVESTIGATIONS INTO THIS CONDUCT?

5 A. THEY HAVE NOT.

6 Q. DID YOUR TESTIMONY TODAY EXPLAIN EVERYTHING THAT YOU KNOW  
7 ABOUT THIS MATTER, OR HAVE YOU MERELY ANSWERED THE QUESTIONS  
8 THAT I'VE ASKED YOU?

9 A. I'VE ANSWERED YOUR QUESTIONS.

10 Q. WHEN YOU TESTIFIED ABOUT CONVERSATIONS THAT YOU HAD WITH  
11 OTHERS OR DOCUMENTS THAT YOU REVIEWED, OTHER THAN THOSE THAT  
12 WE'VE REVIEWED TODAY, DID YOU TESTIFY TO THE EXACT WORDS USED,  
13 OR JUST TO THE SUBSTANCE OF THE CONVERSATIONS IN THE DOCUMENTS?

14 A. TO THE SUBSTANCE.

15 MS. HARRIS: OKAY. DOES THE COURT HAVE ANY  
16 ADDITIONAL QUESTIONS FOR MR. ZADIG?

17 THE COURT: I DO NOT.

18 MS. HARRIS: OKAY. THANK YOU.

19 THE COURT: ALL RIGHT.

20 MR. ARCHER, GO AHEAD, PLEASE.

21 MR. ARCHER: CAN WE TAKE A VERY QUICK RESTROOM BREAK,  
22 A FEW MINUTES?

23 THE COURT: OKAY. THAT'S FINE.

24 MR. ARCHER: THANKS.

25 THE COURT: YOU CAN STEP DOWN DURING THE BREAK.

1 THE WITNESS: THANK YOU.

2 (RECESS FROM 11:20 A.M. UNTIL 11:25 A.M.)

3 THE COURT: ALL RIGHT. GO AHEAD, PLEASE.

4 MR. ARCHER: THANK YOU, YOUR HONOR.

5 **CROSS-EXAMINATION**

6 BY MR. ARCHER:

7 Q. GOOD MORNING, MR. ZADIG.

8 MR. ZADIG, ARE YOU FAMILIAR WITH THE CASE OF UNITED STATES  
9 VERSUS DERRICK LEE DRIVDAHL, D-R-I-V-D-A-H-L?

10 A. I AM, YES.

11 Q. AND YOU SUBMITTED A DECLARATION IN THAT CASE; IS THAT  
12 CORRECT?

13 A. I DID, YES.

14 Q. AND THAT WAS PART OF A MOTION TO SUPPRESS ON THE, ON  
15 BEHALF OF THE DEFENSE, YOUR DECLARATION WAS IN RESPONSE TO  
16 THAT; IS THAT CORRECT?

17 A. THAT'S CORRECT.

18 Q. OKAY. AND THE JUDGE IN THAT CASE RULED IN FAVOR OF THE  
19 PROSECUTION IN THAT MOTION; IS THAT CORRECT?

20 A. I BELIEVE SO, YES.

21 Q. OKAY. AND THAT WAS BECAUSE THE JUDGE THERE HELD THAT THE,  
22 THE GOVERNMENT WAS UNAWARE OF YOUR SEARCH WHEN IT OCCURRED.

23 DO YOU RECALL THAT?

24 A. I ACTUALLY DON'T SPECIFICALLY RECALL.

25 Q. OKAY. SO I'D LIKE TO SHOW YOU, THIS IS EXHIBIT -- OUT OF

1 DEFENSE EXHIBIT RR, THIS IS BATES 2040. THE GOVERNMENT SHOWED  
2 YOU THIS AS WELL.

3 SO DO YOU RECOGNIZE THIS AS AN E-MAIL COMMUNICATION  
4 BETWEEN -- WELL, BETWEEN A HOMELAND SECURITY AGENT AND YAHOO  
5 LEGAL COUNSEL AND YOU?

6 A. I DO, YES.

7 Q. OKAY. SO HOMELAND SECURITY APPEARS TO BE RAISING AN ISSUE  
8 ABOUT SOME REPORTS IN -- SORRY -- SOME NAMES IN THE OCTOBER  
9 REPORT, OCTOBER 2014 REPORT THAT DID NOT HAVE ASSOCIATED  
10 CYBERTIPS WITH THEM. IS THAT YOUR UNDERSTANDING OF THE CONCERN  
11 THERE?

12 A. THAT'S MY UNDERSTANDING OF THIS QUESTION, YES.

13 Q. OKAY. AND SO IS IT FAIR TO SAY THEN THAT THERE WERE USERS  
14 THAT WERE IDENTIFIED IN THE OCTOBER 2014 REPORTS SUBMITTED FOR  
15 WHICH THERE HAD NOT BEEN INDIVIDUAL CYBERTIPS?

16 A. THAT'S CORRECT.

17 Q. OKAY. WAS IT -- IS IT ALSO CORRECT TO SAY THAT THERE WERE  
18 USERS IN THE DECEMBER 2014 SUPPLEMENTAL REPORT WHO HAD BEEN  
19 IDENTIFIED, BUT FOR WHOM THERE HAD NOT BEEN CYBERTIP REPORTS?

20 A. IF YOU MEAN IDENTIFIED BY E-MAIL ADDRESS, THEN YES, THAT'S  
21 RIGHT.

22 Q. RIGHT. SO IDENTIFIED -- SO LET'S SAY FOR THE DECEMBER  
23 2014 REPORT, HAD BEEN IDENTIFIED AS TARGETS OF THE  
24 INVESTIGATION, BUT FOR WHOM THERE HAD NOT BEEN CYBERTIPS,  
25 SEPARATE CYBERTIPS SUBMITTED; CORRECT?

1 A. YES. SO WE HAD PROVIDED BUYERS AND SELLERS IN THESE  
2 INVESTIGATIONS, SOME OF WHOM WE REPORTED IN CYBERTIPS AND  
3 OTHERS WHICH WE DID NOT.

4 Q. OKAY. SO MR. WOLFENBARGER -- SORRY.

5 THE JRWOLFEN02 ACCOUNT WHICH WAS IDENTIFIED IN THE  
6 DECEMBER 2014 REPORT, THAT HAD NOT HAD A SEPARATE CYBERTIP  
7 REPORT SUBMITTED AT THAT POINT; CORRECT?

8 A. THAT'S CORRECT.

9 Q. OKAY. SO THAT CYBERTIP REPORT WAS SUBMITTED IN NOVEMBER  
10 OF 2015?

11 A. I BELIEVE SO, YES.

12 Q. OKAY. BUT MR. WOLFENBARGER HAD BEEN IDENTIFIED AS A  
13 TARGET OF YAHOO'S INVESTIGATION BASED ON CHAT SNIPPETS AND  
14 E-MAIL HEADERS IN OCTOBER -- SORRY -- IN DECEMBER OF 2014?

15 A. YES. IN THE INITIAL INVESTIGATION THAT MR. WOLFENBARGER'S  
16 ACCOUNT WAS DISCOVERED, HE WAS IDENTIFIED AS BEING SOMEBODY WHO  
17 WAS ENGAGED IN COMMUNICATIONS WITH THE SELLER ACCOUNTS IN THE  
18 PHILIPPINES, AND OUR BELIEF WAS FOR THE PURPOSE OF OBTAINING  
19 CHILD SEXUAL ABUSE MATERIAL.

20 BUT WE DID NOT OBSERVE ANY REPORTABLE CONDUCT AT THAT  
21 TIME.

22 Q. OKAY. BUT YOU OBSERVED ENOUGH THAT YOU FELT IT  
23 APPROPRIATE TO IDENTIFY HIM AS A TARGET IN THE DECEMBER 2014  
24 REPORT; CORRECT?

25 A. THAT'S CORRECT, YES.

1 Q. OKAY. I'D LIKE TO TALK A LITTLE BIT ABOUT ACCOUNT  
2 SHUTDOWNS, OR SUSPENSIONS.

3 SO THE -- YAHOO HAS THE ABILITY TO CLOSE AN ACCOUNT; IS  
4 THAT CORRECT?

5 A. IT DOES, YES.

6 Q. OKAY. DOES IT -- ARE THERE SORT OF -- IS THERE THE  
7 ABILITY THEN TO ALSO FREEZE AN ACCOUNT WITHOUT FULLY CLOSING  
8 IT? ARE THERE SORT OF INTERMEDIARY STEPS BETWEEN FULLY CLOSING  
9 AN ACCOUNT AND LEAVING IT COMPLETELY OPEN?

10 A. NOT FROM OUR PERSPECTIVE. THERE'S -- WE CAN DEACTIVATE AN  
11 ACCOUNT, AND THEN WHETHER OR NOT THE DATA ASSOCIATED WITH THAT  
12 ACCOUNT GETS DELETED IS -- THERE ARE VARIOUS INTERNAL PROCESSES  
13 THAT WE'LL GO THROUGH AFTER A PERIOD OF TIME AND CLEAN UP THE  
14 ACCOUNTS THAT ARE NO LONGER ACTIVE OR HAVE BEEN DELETED FOR A  
15 CERTAIN PERIOD OF TIME.

16 FROM OUR PERSPECTIVE, IT'S AN ACCOUNT IS EITHER IN AN  
17 ACTIVATED OR DEACTIVATED STATE.

18 Q. SO WHEN I'M SAYING "CLOSED," "DEACTIVATED" IS THE SAME  
19 TERMINOLOGY FROM YOUR END?

20 A. THAT'S CORRECT, YES.

21 Q. AND YOU, IN YOUR ROLE, HAVE THE ABILITY TO DEACTIVATE AN  
22 ACCOUNT, BUT THEN PRESERVE THE INFORMATION IN IT FOR AN  
23 INDEFINITE PERIOD OF TIME; IS THAT CORRECT?

24 A. I -- NOT AN INDEFINITE PERIOD OF TIME. WE ACTUALLY USE  
25 THE TOOLS, THE LEGAL TOOLS, INTERNAL LEGAL TOOLS THAT RESPOND

1 TO PRESERVATION ORDERS FROM LAW ENFORCEMENT TO ALSO PRESERVE  
2 ACCOUNT CONTENTS AS PART OF OUR INTERNAL INVESTIGATIONS.

3 AFTER A PERIOD OF TIME, I BELIEVE 180 DAYS OR SO, THOSE  
4 TEND TO AGE OUT AND DISAPPEAR.

5 Q. OKAY. WHEN YOU SAY THEY TEND TO AGE OUT, BUT, YOU, IN  
6 YOUR ROLE AS A SUPERVISOR OF THE ECIT, WOULD HAVE THE ABILITY  
7 TO MAINTAIN THAT DATA; CORRECT?

8 A. WE COULD, YES.

9 Q. OKAY. SO IN TERMS OF ACCOUNT DEACTIVATIONS, WHICH TEAMS  
10 HAVE THE ABILITY TO DEACTIVATE ACCOUNTS? AND IF -- SPEAKING  
11 FOR THE TIME PERIOD OF, SAY, 2014, 2015, 2016.

12 A. INSIDE OF YAHOO, THERE WERE A NUMBER OF TEAMS THAT HAD THE  
13 ABILITY TO DEACTIVATE ACCOUNTS FOR A VARIETY OF REASONS.  
14 CERTAINLY THE ECIT WAS ONE OF THEM. THE MODERATION TEAM THAT  
15 REPORTED CYBERTIPS WAS ALSO A SECOND TEAM.

16 ADDITIONALLY, THERE WERE TEAMS WITHIN WHAT WE CALLED  
17 MEMBERSHIP, OR THE TEAM THAT HANDLES USER ACCOUNTS IN GENERAL,  
18 COULD DEACTIVATE ACCOUNTS THAT WERE ENGAGED IN REGISTRATION  
19 ABUSE OR MASS REGISTRATION.

20 OUR MAIL TEAM COULD DEACTIVATE ACCOUNTS THAT APPEARED TO  
21 BE SENDING SPAM OR ONLINE SCAMS USING THE MAIL SYSTEM.

22 AND I THINK EVEN PROPERTIES, LIKE YAHOO MESSENGER OR OTHER  
23 PROPERTIES, COULD DEACTIVATE ACCOUNTS IF THEY APPEARED TO BE  
24 ENGAGED IN SOME SORT OF ABUSE OR VIOLATION OF OUR TERMS OF  
25 SERVICE.

1 Q. OKAY. SO A MEMBER OF THE MODERATION TEAM, FOR INSTANCE,  
2 THEY COULD SHUT DOWN AN INDIVIDUAL ACCOUNT IF THEY FOUND  
3 SOMETHING THAT THEY THOUGHT WAS IN VIOLATION OF YAHOO'S TERMS?  
4 WOULD THAT BE WITHIN THEIR ABILITIES?

5 A. THEY COULD DO SO, YES.

6 Q. OKAY. WOULD THEY NEED TO GO TO A SUPERVISOR TO DO THAT  
7 WITHIN THEIR TEAM, OR COULD THEY DO THAT WITHOUT APPROVAL FROM  
8 ABOVE, SHALL WE SAY?

9 A. IF IT WERE PART OF THEIR SORT OF DAY-TO-DAY REPORTING TO  
10 NCMEC REVIEW PROCESS, THEN THEY WOULD NOT REQUIRE A  
11 SUPERVISION -- OR SUPERVISOR APPROVAL.

12 Q. OKAY.

13 THE COURT: CAN I FOLLOW UP?

14 THE FIRST CASE THAT YOU MENTIONED, IS THAT ONE OF THE  
15 ONES -- DO I HAVE THE ORDER IN THAT CASE?

16 MS. HARRIS: DRIVDAHL? YES, YOUR HONOR. IT WAS  
17 FILED AS GOVERNMENT'S EXHIBIT, I THINK IT'S P.

18 THE COURT: OKAY. AND DOES THAT INCLUDE MR. ZADIG'S  
19 DECLARATION, OR NOT?

20 MR. ARCHER: IT DOES --

21 MS. HARRIS: NO. THE GOVERNMENT FILED JUST THE CASE,  
22 YOUR HONOR.

23 MR. ARCHER: HIS DECLARATION IS UNDER SEAL IN THAT  
24 CASE.

25 THE COURT: I SEE.

1 MR. ARCHER: SO THE DEFENSE DOESN'T HAVE A COPY OF  
2 IT.

3 THE COURT: ALL RIGHT. WHAT ABOUT -- I DIDN'T  
4 UNDERSTAND THE DISTINCTION OF THE -- MR. WOLFENBARGER'S NAME IN  
5 THE DECEMBER 2014 YAHOO REPORT, THAT HE WAS LISTED BECAUSE HE  
6 WAS IN COMMUNICATION WITH PHILIPPINE SELLERS OF CHILD SEX  
7 ABUSE -- I DON'T KNOW IF THAT WAS VIDEOS OR LIVE STREAMING OR  
8 PHOTOS OR IMAGES -- BUT THERE WAS NO REPORTABLE CONDUCT AT THAT  
9 TIME. I DIDN'T UNDERSTAND THAT.

10 THE WITNESS: SO TO REPORT TO NCMEC, THERE'S A  
11 CERTAIN CRITERIA THAT HAS TO BE MET. SOME OF IT IS LAID OUT IN  
12 FEDERAL LAW. SOME OF IT IS WHAT THE NCMEC WEBSITE WILL LET US  
13 SUBMIT.

14 SO, FOR EXAMPLE, IF AN ACCOUNT HAS, IN ITS CONTENTS,  
15 IMAGES OR VIDEO DEPICTING CHILD ABUSE THAT ARE ESSENTIALLY  
16 POSSESSED WITHIN THE CONTENT OF THE ACCOUNT, THAT IS SOMETHING  
17 THAT WE HAVE TO REPORT TO NCMEC WHEN WE DISCOVER IT.

18 ANOTHER TYPE OF ACTIVITY THAT WE CAN REPORT TO NCMEC IS  
19 TEXT, SO CHAT CONVERSATIONS OR OTHER TEXT DESCRIBING CHILD  
20 ABUSE. BUT THERE'S ONLY A CERTAIN SUBSET OF -- WELL, THERE'S  
21 CERTAIN CRITERIA THAT HAVE TO BE MET TO MAKE THAT REPORT. ONE  
22 OF THOSE CRITERIA IS THE, LIKE, TRAVEL FOR THE PURPOSE OF CHILD  
23 ABUSE.

24 SO WE FREQUENTLY ENCOUNTER CASES WHERE USERS OF THE YAHOO  
25 MESSENGER SERVICE MIGHT BE IN COMMUNICATION WITH THE SELLERS IN



1 THE PHILIPPINES AND THEY MIGHT BE ASKING FOR, SAY, 12-YEAR-OLD  
2 CHILDREN, OR CHILDREN WHO COULD DO CERTAIN SEX ACTS ON WEBCAM.

3 HOWEVER, THAT IN ITSELF WAS NOT REPORTABLE. NCMEC WOULD  
4 NOT BE ABLE TO ACCEPT THAT INFORMATION FROM US BECAUSE IT  
5 DIDN'T MEET THE CRITERIA THAT WAS DESCRIBED, I THINK, IN THE --  
6 AT LEAST ON THEIR WEBSITE.

7 THE COURT: OKAY. BUT YOU SAID IF A YAHOO USER IS IN  
8 CONNECTION WITH A SELLER IN THE PHILIPPINES TO ASK FOR A  
9 12-YEAR-OLD CHILD OR CHILDREN WHO WOULD DO CERTAIN SEX ACTS,  
10 THAT'S NOT REPORTABLE? WHY IS THAT? I GUESS I'M NOT CLEAR.

11 THE WITNESS: YEAH, AS FAR AS -- SO REPORTING IMAGES  
12 OR VIDEO IS VERY EASY.

13 THE COURT: RIGHT.

14 THE WITNESS: IT'S PLAINLY CHILD SEXUAL ABUSE  
15 MATERIAL AND IT'S A FEDERAL LAW THAT REQUIRES, WHEN WE BECOME  
16 AWARE OF IT, WE HAVE TO REPORT IT.

17 JUST SOMEBODY EXPRESSING A DESIRE TO, TO VIEW THIS TYPE OF  
18 MATERIAL, SAY, VERY REGULARLY, ALMOST ON A DAILY BASIS,  
19 SOMEBODY MIGHT COME TO OUR YAHOO ANSWERS PRODUCT AND SAY, WHERE  
20 CAN I BUY CP, OR CHILD PORNOGRAPHY?

21 WE WILL TERMINATE THE ACCOUNT UNDER OUR TERMS OF SERVICE  
22 FOR THAT, FOR THAT MESSAGE, OR ISSUE THEM A WARNING PERHAPS,  
23 BUT WE WILL NOT REPORT THAT TO NCMEC BECAUSE THAT INQUIRY, THAT  
24 DESIRE ON THEIR BEHALF IS NOT SOMETHING THAT, ACCORDING TO  
25 NCMEC AND OUR ATTORNEYS, IS REPORTABLE UNDER THE FEDERAL LAW.

1 THE COURT: OKAY. AND WHAT WERE THE CHATS THAT YOU  
2 SAW FROM MR. WOLFENBARGER'S ACCOUNT AS OF DECEMBER OF 2014?

3 THE WITNESS: THOSE WERE -- AND I DON'T HAVE  
4 PARTICULAR DIRECT RECOLLECTION OF HIS SPECIFIC CHATS -- BUT  
5 THOSE WOULD HAVE BEEN CHATS FROM MR. WOLFENBARGER TO NUMEROUS  
6 SELLING ACCOUNTS IN THE PHILIPPINES REGARDING THE CHATS  
7 INVOLVING CHILDREN OF SOME SORT.

8 SO THOSE SELLER ACCOUNTS WERE OFFERING FOR SALE, YOU KNOW,  
9 THE LIVE STREAMED ABUSE AND THE IMAGES OR VIDEO, AND WE SAW  
10 MR. WOLFENBARGER'S ACCOUNT IN COMMUNICATION WITH A NUMBER OF  
11 THOSE. AND EVEN THOUGH WE COULD ONLY SEE THE SMALL SNIPPETS IN  
12 OUR LIMITED CONTENT REVIEW, LIKE I DISCUSSED LAST TIME, WHAT WE  
13 HAD SEEN WAS SUFFICIENT TO LEAD US TO BELIEVE THAT THE PURPOSE  
14 OF THOSE COMMUNICATIONS WAS FOR OBTAINING CHILD ABUSE MATERIAL.

15 THE COURT: BUT THAT WAS NOT REPORTABLE TO NCMEC?

16 THE WITNESS: THAT'S CORRECT.

17 THE COURT: BECAUSE IT DIDN'T MEET NCMEC'S CRITERIA?

18 THE WITNESS: YES. AND I'M -- I BELIEVE NCMEC'S  
19 CRITERIA IS DERIVED FROM 18 U.S.C. 2258, OR ONE OF THE 2256 OR  
20 -2, YOU KNOW, STATUTES ON WHAT, WHAT SERVICE PROVIDERS HAVE TO  
21 REPORT WHEN THEY ENCOUNTER IT. AND JUST THE DESIRE FOR  
22 MATERIAL IS NOT ONE OF THOSE -- IS NOT ONE OF THOSE CRITERIA,  
23 EVEN THOUGH IT DOES VIOLATE OUR TERMS OF SERVICE.

24 THE COURT: OKAY. THANK YOU.

25 SORRY FOR THE INTERRUPTION.

1 BY MR. ARCHER:

2 Q. MR. ZADIG, YOU DID, IN FACT, IDENTIFY THE JRWOLFEN02  
3 ACCOUNT IN DECEMBER OF 2014 AS WHAT YOU CONSIDERED A BUYER  
4 ACCOUNT; CORRECT?

5 A. WE BELIEVED IT WAS, YES.

6 Q. OKAY. AND THAT WAS BASED ON YOUR REVIEW OF CHAT SNIPPETS,  
7 AND DO YOU RECALL ANY OTHER MATERIALS?

8 A. IT WAS THE LIMITED CONTENT REVIEW. I BELIEVE IT WAS JUST  
9 THE CHAT SNIPPETS.

10 THERE WERE HUNDREDS OF ACCOUNTS THAT WE WERE REVIEWING AT  
11 THIS TIME AND, AS I MENTIONED IN OUR LAST TESTIMONY, WE HAD A  
12 DESIRE TO GET THIS INFORMATION TO NCMEC AS QUICKLY AS POSSIBLE  
13 BECAUSE WE BELIEVED THAT THERE WERE CHILDREN BEING ABUSED, YOU  
14 KNOW, SORT OF IN REAL TIME.

15 SO, YEAH, I BELIEVE AT THAT TIME WE ONLY CONDUCTED A  
16 LIMITED CONTENT REVIEW OF THE CHAT SNIPPETS, OBSERVED THE  
17 COMMUNICATIONS RELATED TO CHILDREN, AND THEN PUT THAT ACCOUNT  
18 INTO THE BUCKET OF A BUYER.

19 Q. OKAY. AND SO THAT WAS INFORMATION THAT WAS PROVIDED TO  
20 NCMEC, THE FBI, AND HOMELAND SECURITY AT THE IN-PERSON MEETING  
21 IN DECEMBER; CORRECT?

22 A. MORE OR LESS. SO WE MADE OUR SUPPLEMENT VIA E-MAIL TO  
23 NCMEC, THE ESP LINE, THE ELECTRONIC SERVICE PROVIDER SECTION OF  
24 NCMEC. ONCE WE CONFIRMED THAT NCMEC HAD RECEIVED THAT  
25 INFORMATION AND THAT LAW ENFORCEMENT HAD OBTAINED THAT

1 INFORMATION FROM NCMEC, WE THEN HAD THE IN-PERSON MEETING THAT  
2 WE DESCRIBED.

3 Q. OKAY. AND YOU PROVIDED ADDITIONAL COPIES OF THE MATERIALS  
4 THAT YOU HAD SUBMITTED AT THAT MEETING; CORRECT?

5 A. YES. WE BROUGHT HARD COPIES SO THE NCMEC REPRESENTATIVES  
6 AND THE LAW ENFORCEMENT REPRESENTATIVES COULD ESSENTIALLY SORT  
7 OF PAGE THROUGH IT AND WE COULD POINT TO AREAS OF RELEVANCE IN  
8 THE REPORT.

9 WE ALSO BROUGHT A CHART THAT LAID OUT THE CONNECTIONS  
10 BETWEEN THE DIFFERENT ACCOUNTS AND DESCRIBED THE RELATIONSHIPS.

11 Q. OKAY. SO THE CHART WAS SOMETHING -- WAS THAT SUBMITTED  
12 THROUGH NCMEC?

13 A. IT WAS, YES.

14 Q. OKAY. THIS IS DEFENSE EXHIBIT RR, BATES 1693. THE  
15 GOVERNMENT WENT OVER THIS E-MAIL WITH YOU. FAIR TO SAY THAT  
16 THIS IS BASICALLY YOUR E-MAIL SETTING UP THE MEETING IN THE  
17 D.C. AREA?

18 A. THAT'S CORRECT, YES.

19 Q. OKAY. SO THAT'S FOR THE DECEMBER 10TH, 2014 MEETING WHEN  
20 THE REPORT WAS SUBMITTED THAT HAD THE JRWOLFEN02 ACCOUNT IN IT;  
21 CORRECT?

22 A. THAT'S CORRECT.

23 Q. OKAY. AND SO JUST TO BE CLEAR ON THE TIMELINE, YOU'RE  
24 REACHING OUT TO SET UP THIS MEETING PRIOR TO SUBMITTING THE  
25 REPORT TO NCMEC; CORRECT?

1 A. I'M NOT CERTAIN, BUT IT'S POSSIBLE, YEAH.

2 Q. OKAY. THEN LET'S TAKE A LOOK AT -- THIS IS EXHIBIT RR,  
3 BATES 2029.

4 IF YOU CAN TAKE A LOOK AT THAT.

5 A. OKAY.

6 Q. AND ACTUALLY, WE'LL -- SO WE'LL FLIP BACK BRIEFLY TO 1693.  
7 DO YOU SEE THE DATE ON THAT E-MAIL?

8 A. I DO, DECEMBER 10TH.

9 Q. DECEMBER 10TH, OKAY.

10 SO -- AND THE DATE ON THIS E-MAIL?

11 A. DECEMBER 12TH.

12 Q. OKAY. SO HAVING NOW SEEN THIS, DO YOU BELIEVE THAT WHEN  
13 YOU SENT THE E-MAIL ON DECEMBER 10TH TO SET UP THE MEETING, AT  
14 THAT POINT YOU HAD NOT SUBMITTED THE SUPPLEMENTAL REPORT TO  
15 NCMEC?

16 A. YES, THAT'S CORRECT.

17 Q. OKAY. SO YOU MENTIONED THE OFFICIAL DATA DISCLOSURE  
18 MECHANISM IS THROUGH NCMEC. BUT YOUR -- WOULD IT BE FAIR TO  
19 SAY THAT YOU WERE PRACTICALLY SENDING THIS TO THE AGENTS THAT  
20 YOU SET UP THE MEETING WITH?

21 MS. HARRIS: OBJECTION. ARGUMENTATIVE.

22 THE COURT: OVERRULED.

23 BUT I DON'T UNDERSTAND THE QUESTION.

24 MR. ARCHER: OKAY.

25 THE COURT: LET ME ASK, WHEN WE WENT THROUGH THE

1       TIMELINE ON JULY 12TH, I UNDERSTOOD THAT THE SUPPLEMENTAL  
2       REPORT WAS -- OR MAYBE THEY WERE CYBERTIPLINE.

3               WHAT WAS ON DECEMBER 14? I'M NOT RECALLING THAT SECOND  
4       TRANCHE. WERE THOSE CYBERTIPLINE REPORTS OR IS THAT THE  
5       SUPPLEMENTAL REPORT? I KNOW THE MEETING WAS ON DECEMBER 16TH,  
6       2014.

7               THE WITNESS: UM --

8               THE COURT: WHAT WAS SUBMITTED IN DECEMBER 2014?  
9       JUST THE SUPPLEMENTAL REPORT OR ADDITIONAL CYBERTIPS?

10              THE WITNESS: SO OUR PROCESS WAS WE WOULD HAVE THE  
11       MODERATION TEAM -- AT THIS TIME, AT LEAST IN 2014, THE  
12       MODERATION TEAM WOULD FILE INDIVIDUAL CYBERTIPS ON VARIOUS  
13       ACCOUNTS. THAT PROCESS WOULD TAKE A FEW DAYS, USUALLY BECAUSE  
14       THERE WERE A NUMBER OF THEM.

15              ONCE ALL THE CYBERTIPS HAD BEEN SUBMITTED TO NCMEC, WE  
16       WOULD -- THE ECIT WOULD THEN SEND A SUPPLEMENTAL REPORT TO  
17       NCMEC WHICH REFERENCED ALL THOSE INDIVIDUAL CYBERTIPS. SO IT  
18       WAS A SORT OF TWO-PHASED APPROACH RELATING TO CYBERTIPS AND THE  
19       SUPPLEMENT.

20              THE COURT: SO CYBERTIPS WENT OUT SEPTEMBER 30TH,  
21       2014, OCTOBER 4TH, 2014, AND THEN AGAIN DECEMBER OF 2014, OR  
22       NOT?

23              THE WITNESS: SO I BELIEVE THERE WERE -- IN 2014  
24       THERE WERE WHAT WE CALL TWO SEPARATE INVESTIGATIONS. THE FIRST  
25       WAS OUR FIRST INVESTIGATION THAT WAS IN -- I THINK THE

1 CYBERTIPS WERE FILED SEPTEMBER 2014 AND WE HAD THE IN-PERSON  
2 MEETING IN OCTOBER AFTER WE SENT OUR SUPPLEMENT.

3 THE COURT: UM-HUM.

4 THE WITNESS: AND THEN WE WENT BACK AND THOUGHT ABOUT  
5 IT A LITTLE BIT AND REALIZED THAT THERE WAS PROBABLY A LOT MORE  
6 THAT WE HADN'T UNCOVERED AND WERE CONCERNED THAT OUR PLATFORMS  
7 WERE STILL BEING ABUSED FOR THIS TYPE OF HORRIFIC CONTENT.

8 SO WE DID THE SECOND INVESTIGATION WHICH CULMINATED IN  
9 BOTH THE -- THE CYBERTIPS GETTING SENT TO NCMEC OF THE  
10 INDIVIDUAL ACCOUNTS THAT HAD CHILD PORNOGRAPHY AS THEIR PROFILE  
11 PICTURES; AND THEN THE SUPPLEMENT THAT, IN ESSENCE, TIED IT ALL  
12 TOGETHER AND RELATED AND INDICATED HOW THEY WERE ALL CONNECTED  
13 TO THE BUYER AND THE SELLERS.

14 IF WE HADN'T DONE THE SUPPLEMENT, THE CYBERTIPS WOULD JUST  
15 BE INDIVIDUAL REPORTS THAT WOULDN'T HAVE ANY WAY OF TYING THEM  
16 TOGETHER AND WOULD ALL HAVE ESSENTIALLY BEEN SENT TO THE  
17 PHILIPPINES WHERE THE PHILIPPINE NATIONAL POLICE MAY OR MAY NOT  
18 HAVE DONE ANYTHING ABOUT THEM.

19 THE COURT: SO WHAT YOU'RE CALLING YOUR SECOND  
20 INVESTIGATION, THOSE WERE THE CYBERTIPS THAT WERE SENT ON  
21 OCTOBER 4TH OF 2014?

22 THE WITNESS: NO, I DON'T BELIEVE SO.

23 I'M SORRY, IT'S A BIT CONFUSING.

24 SO I BELIEVE IN SEPTEMBER OF 2014, WE SENT THE CYBERTIPS;  
25 AND THEN WE HAD A MEETING IN OCTOBER ABOUT THE SUPPLEMENT THAT

1 WAS -- BOTH THOSE IN EVENTS IN SEPTEMBER AND OCTOBER WERE WHAT  
2 WE CALL OUR FIRST INVESTIGATION.

3 THE COURT: OKAY.

4 THE WITNESS: THE DECEMBER WAS AROUND WHAT WE CALL  
5 OUR SECOND INVESTIGATION AND THERE WAS, AGAIN, THE TWO-PHASE  
6 APPROACH OF FIRST CYBERTIPS FILED BY THE MODERATION TEAM, AND  
7 THEN THE SUPPLEMENT THAT TIES IT ALL TOGETHER.

8 ONCE THAT WAS SENT TO NCMEC, WE HAD THE E-MAIL ON THE  
9 SCREEN NOW ABOUT ARRANGING A MEETING TIME IN WASHINGTON, D.C.

10 THE COURT: SO WHEN WERE THOSE, THE SECOND  
11 INVESTIGATION CYBERTIPS, FILED?

12 THE WITNESS: THEY PROBABLY WOULD HAVE BEEN LIKELY IN  
13 LATE NOVEMBER OR EARLY DECEMBER OF 2014. IT WAS A DIFFERENT  
14 TEAM THAT FILED THEM, SO WE HAD TO RELY UPON THE MODERATION  
15 TEAM'S BANDWIDTH, OR AVAILABILITY OUTSIDE OF THEIR NORMAL SORT  
16 OF DAY-TO-DAY DUTIES TO TAKE ON THIS LARGE REQUEST FROM US.

17 THE COURT: AND THEN WHEN IS YOUR THIRD  
18 INVESTIGATION?

19 THE WITNESS: OUR THIRD INVESTIGATION BEGINS IN JULY  
20 OF 2015. THAT TAKES -- IT'S A MUCH LARGER INVESTIGATION. IT  
21 TAKES US A NUMBER OF MONTHS.

22 AND WE FILE THE CYBERTIPS BEGINNING IN AROUND NOVEMBER OF  
23 2015 AND INTO DECEMBER OF 2015, AND THEN WE HAVE A MEETING --  
24 WELL, WE SET UP THE MEETING IN JANUARY 2016 AND ACTUALLY HAD  
25 THE MEETING IN FEBRUARY OF 2016.



1 THE COURT: OKAY. AND THEN YOUR FOURTH INVESTIGATION  
2 IS THE ONE THAT YOU SAID WAS JUST COMPLETED IN 2019?

3 THE WITNESS: THAT'S CORRECT.

4 THE COURT: THOSE CYBERTIPS WERE FILED WHEN?  
5 FEBRUARY OF 2019 OR SOMETHING LIKE THAT?

6 THE WITNESS: SOMEWHERE AROUND THEN. I BELIEVE WE  
7 ACTUALLY HAD THE SORT OF MEETING IN APRIL OF 2019.

8 I DIDN'T HAVE DIRECT INVOLVEMENT IN THIS CASE DUE TO MY  
9 CHANGE IN POSITION, BUT I BELIEVE IT WAS SOMEWHERE AROUND  
10 FEBRUARY OF 2019.

11 THE COURT: OKAY. YOU WERE NOT INVOLVED IN THE  
12 FOURTH INVESTIGATION?

13 THE WITNESS: NOT DIRECTLY. I SUPERVISED THE TEAM  
14 THROUGH A COUPLE DIFFERENT LAYERS. BUT -- I WAS AWARE OF IT,  
15 BUT NOT DIRECTLY INVOLVED.

16 THE COURT: OKAY.

17 THANK YOU FOR LETTING ME CLEAR UP THE TIMELINE,  
18 MR. ARCHER. GO AHEAD, PLEASE.

19 MR. ARCHER: THANK YOU.

20 Q. SO MY QUESTION THEN, MR. ZADIG, IS WHEN YOU'RE SENDING  
21 THESE MATERIALS OVER, INCLUDING THE SUPPLEMENTAL REPORT, YOUR  
22 INTENTION IS THAT THEY REACH AGENT YESENSKY; CORRECT?

23 A. I WOULD NOT SAY THAT. I WOULD SAY THAT OUR -- WE'RE  
24 REQUIRED TO SEND IT TO NCMEC.

25 HOWEVER, WE ALSO WANT TO ENSURE THAT, BECAUSE OF THE

1 RESILIENCY ASPECTS LIKE I DISCUSSED EARLIER, THAT THESE  
2 CYBERTIPS DON'T JUST SORT OF GO INTO THE VOID AND DISAPPEAR,  
3 BUT WE WANTED TO ENSURE THAT THEY ACTUALLY WERE SEEN AND HAD --  
4 BY SOMEBODY WHO COULD ACTION THEM.

5 SO ONCE WE NOTIFIED NCMEC AND SENT THE DATA TO NCMEC, WE  
6 THEN REACHED OUT TO AGENT YESENSKY AND AGENT O'CALLAGHAN AND  
7 SAID THAT THE DATA WAS AT NCMEC AND COULD BE RETRIEVED.

8 Q. SO -- BUT YOU, IN FACT, CONTACTED THEM PRIOR TO SUBMITTING  
9 THE CYBERTIPS, OR AT LEAST PRIOR TO SUBMITTING THE SUPPLEMENTAL  
10 REPORT IN DECEMBER OF 2014; CORRECT?

11 A. TO SET UP THE MEETING, CORRECT.

12 Q. OKAY. AND SO -- BUT THEN IT WOULD BE CORRECT TO SAY THAT  
13 THEY WERE THE INTENDED TARGETS, OR IF NOT AMONG THE INTENDED  
14 TARGETS OR RECIPIENTS OF THE INFORMATION YOU WERE SENDING TO  
15 NCMEC; CORRECT?

16 A. CERTAINLY WE KNEW THAT NCMEC WOULD RECEIVE IT AND HAD  
17 INTENDED THAT THE FBI AND HOMELAND SECURITY WOULD ALSO BE ABLE  
18 TO SEE IT AFTER NCMEC DID, CORRECT.

19 Q. OKAY. AND SO -- AND, IN FACT, A NUMBER OF TIMES YOU ASKED  
20 THEM TO GO RETRIEVE THE REPORTS ONCE THEY'D BEEN SUBMITTED;  
21 CORRECT?

22 A. YES. OUR REQUEST TO NCMEC, BECAUSE -- I THINK I MIGHT  
23 HAVE MENTIONED IN OUR LAST TESTIMONY -- WAS THAT NCMEC'S  
24 PROCESS IS TO GET AN INDIVIDUAL CYBERTIP, DETERMINE WHERE THE  
25 USER REFERENCED IN THE CYBERTIP IS LOCATED, WHEREVER IT IS IN

1 THE WORLD, AND THEN SEND IT TO THAT LOCATION.

2 Q. SO IF I COULD INTERRUPT. MY QUESTION WAS THAT ON A NUMBER  
3 OF OCCASIONS, YOU REACHED OUT DIRECTLY TO THE FBI AND HOMELAND  
4 SECURITY INVESTIGATIONS TO ASK THEM TO GET THINGS FROM NCMEC  
5 THAT YOU HAD SUBMITTED; CORRECT?

6 A. YES. AS I WAS TRYING TO SAY, WE HAD --

7 Q. THAT'S ALL. THAT WAS MY QUESTION.

8 MS. HARRIS: I WOULD ASK THAT THE WITNESS BE ALLOWED  
9 TO FINISH THE ANSWER, PLEASE.

10 THE COURT: GO AHEAD, PLEASE. YOU CAN ANSWER THE  
11 QUESTION.

12 THE WITNESS: SO WE HAD ASKED NCMEC -- BECAUSE THERE  
13 WERE ALL THESE DIFFERENT HUNDREDS OF CYBERTIPS FLOWING INTO  
14 NCMEC THAT WOULD THEN BE SENT ALL OVER THE COUNTRY, ALL OVER  
15 THE WORLD, WE HAD ASKED NCMEC TO HOLD THOSE CYBERTIPS SO THE  
16 INVESTIGATION COULD BE SEEN AS ONE ENTITY INSTEAD OF HUNDREDS  
17 OF UNCONNECTED CYBERTIPS.

18 ONCE WE HAD SUBMITTED OUR LAST CYBERTIP AND SUPPLEMENT, IN  
19 OUR VIEW, THAT WAS A COMPLETE SORT OF INVESTIGATION THAT WAS  
20 THEN READY TO BE SEEN IN ITS FULL CAPACITY BY, IN THIS CASE,  
21 THE FBI AND HOMELAND SECURITY.

22 BY MR. ARCHER:

23 Q. OKAY. SO IF I COULD DIRECT YOUR ATTENTION, THIS IS AGAIN  
24 EXHIBIT RR AND IT'S BATES 1699.

25 YOU RECALL SENDING THIS E-MAIL?

1 A. I DO, YES.

2 Q. SO THE GOVERNMENT ASKED YOU A LITTLE BIT ABOUT THIS.

3 THE E-MAIL HERE IS -- TELL ME IF I'M SUMMARIZING THIS  
4 CORRECTLY -- DIRECTING BOTH JEFF YESENSKY AND NEIL O'CALLAGHAN  
5 TO A TOOL THAT WOULD ALLOW THEM TO REVIEW THE YAHOO AVATARS OF  
6 MESSENGER ACCOUNTS WITHOUT HAVING TO LOG IN WITH THEIR OWN  
7 ACCOUNT; IS THAT CORRECT?

8 A. THAT'S CORRECT.

9 Q. OKAY. AND THE PURPOSE OF THAT WAS TO AID THEM IN THEIR  
10 INVESTIGATION OF THESE ACCOUNTS; CORRECT?

11 A. YES. WE WANTED TO MAKE SURE THAT, BECAUSE SOME OF THE  
12 SELLER ACCOUNTS HAD PROFILE PICTURES, AS I MENTIONED IN THE  
13 SECOND PARAGRAPH HERE, THAT HAD IMAGES OF CHILDREN THAT WERE  
14 NOT -- DIDN'T MEET THE FEDERAL -- THE DEFINITION FOR CHILD  
15 PORNOGRAPHY, SO WE WERE NOT ABLE TO REPORT THOSE ACCOUNTS, THEY  
16 STILL, IN OUR BELIEF, INDICATED CHILDREN WHO WERE LIKELY AT  
17 RISK OF BEING ABUSED OR BEING ABUSED IN OTHER CONTEXTS.

18 SO, YES, I WANTED TO MAKE SURE THAT LAW ENFORCEMENT WAS  
19 ABLE TO SEE THOSE POTENTIAL VICTIMS, CHILD ABUSE VICTIMS.

20 Q. OKAY. BUT, AGAIN, THE PURPOSE OF SENDING THIS E-MAIL WAS  
21 TO HELP THEM WITH THEIR INVESTIGATION; CORRECT?

22 A. THE PURPOSE OF THE E-MAIL WAS TO DIRECT THEM TO AN OPEN  
23 SOURCE TOOL THAT WE UTILIZED IN OUR OWN INVESTIGATION AND WHICH  
24 THEY MIGHT ALSO FIND USEFUL, CORRECT.

25 Q. OKAY. AND IF YOU SEE DOWN, I THINK IT'S ABOUT THREE LINES

1 FROM THE BOTTOM, YOU SAID THAT THEY "MIGHT FIND VALUE IN  
2 CHECKING THESE PICTURES WHEN WRITING UP YOUR AFFIDAVITS."

3 ARE YOU REFERRING TO SEARCH WARRANT AFFIDAVITS IN THAT  
4 CASE?

5 A. I WAS, YES.

6 Q. OKAY. SO YOU THOUGHT THIS TOOL MIGHT BE HELPFUL FOR THEM  
7 IN DEVELOPING PROBABLE CAUSE TO THEN SEEK WARRANTS AGAINST THE  
8 IDENTIFIED TARGETS?

9 A. BASED ON MY UNDERSTANDING OF WHAT LAW ENFORCEMENT DOES  
10 WITH THESE REPORTS THAT WE SEND, JUST LIKE HOW WE UTILIZE OPEN  
11 SOURCE INVESTIGATIVE METHODS, LIKE FACEBOOK OR LINKEDIN OR  
12 OTHER OPEN SOURCE TOOLS, THIS WAS ONE OF THE TOOLS THAT WE  
13 UTILIZED, AND WHILE IN THE REPORT WE SAID LINKEDIN PROFILE,  
14 FACEBOOK PROFILES OF CERTAIN BUYERS, FOR EXAMPLE, TO HIGHLIGHT  
15 PEOPLE WHO MAY HAVE ACTUALLY BEEN TRAVELING OR HAD ACCESS TO  
16 CHILDREN, THIS WAS A TOOL WE DIDN'T CALL OUT IN OUR REPORT, SO  
17 WE WANTED TO MAKE SURE THAT THEY WERE AWARE OF IT.

18 Q. OKAY. YOU HAVE EXPERIENCE AS A FEDERAL LAW ENFORCEMENT  
19 OFFICER; IS THAT CORRECT?

20 A. A LITTLE DATED NOW, BUT YES.

21 Q. OKAY. HOW MANY YEARS DID YOU WORK AS AN AGENT?

22 A. SEVEN YEARS.

23 Q. OKAY. AND IN THAT TIME, DID YOU HAVE THE OCCASION TO  
24 PREPARE SEARCH WARRANT AFFIDAVITS AND APPLY FOR SEARCH  
25 WARRANTS?

1 A. I DID, YES.

2 Q. OKAY. AND SO WHEN YOU'RE SUGGESTING THAT THIS TOOL MIGHT  
3 BE HELPFUL TO THEM, "THEM" BEING AGENTS YESENSKY AND  
4 O'CALLAGHAN, WERE YOU DRAWING ON YOUR EXPERIENCE IN DEVELOPING  
5 SEARCH WARRANT AFFIDAVITS FOR SEARCH WARRANT APPLICATIONS IN  
6 YOUR PRIOR CAREER?

7 A. I WOULD SAY IT'S A BIT OF BOTH, THAT BOTH THAT -- AND IN  
8 2014, IT WAS A LITTLE MORE RECENT, MY LAW ENFORCEMENT  
9 EXPERIENCE.

10 BUT ALSO TRYING TO SHOW ALL THE TOOLS THAT WE UTILIZED IN  
11 OUR INTERNAL INVESTIGATION.

12 Q. OKAY. THIS IS BATES 1700 FROM EXHIBIT RR.  
13 YOU RECALL SENDING THIS E-MAIL?

14 A. I DO, YES.

15 Q. OKAY. THE GOVERNMENT DISCUSSED THIS WITH YOU A LITTLE  
16 BIT, BUT WOULD YOU AGREE THAT THIS IS AN -- A SUGGESTION ABOUT  
17 HOW TO CIRCUMVENT THE MLAT PROCESS?

18 A. I WOULD NOT AGREE WITH THAT CHARACTERIZATION, NO.

19 Q. OKAY. SO WHAT YOU'RE SUGGESTING THAT THIS INFORMATION  
20 BE -- SO I GUESS -- I'LL STEP BACK A SECOND.

21 WHAT YOU'RE SUGGESTING TO AGENT YESENSKY HERE IS THAT HE  
22 GET THE INFORMATION VIA A U.S. SEARCH WARRANT AND THEN SHARE IT  
23 DIRECTLY WITH LAW ENFORCEMENT IN EUROPE; CORRECT?

24 A. YES. AS A U.S. COMPANY, FRANKLY, IT'S A LOT EASIER FOR US  
25 TO HANDLE U.S. SEARCH WARRANTS.

1 Q. OKAY. SO -- AND YOU DISCUSS HERE AN MLAT OR A LETTER  
2 ROGATORY.

3 YOUR UNDERSTANDING WAS NOT THAT AGENT YESENSKY WOULD SHARE  
4 THE INFORMATION THAT HE GOT VIA EITHER OF THOSE TWO METHODS;  
5 CORRECT?

6 MS. HARRIS: OBJECTION. CALLS FOR SPECULATION.

7 AND THE WITNESS DOESN'T HAVE PERSONAL KNOWLEDGE OF WHAT  
8 AGENT YESENSKY WOULD HAVE DONE OR DID DO.

9 MR. ARCHER: I'M ASKING HIM WHAT HIS -- WHAT HE WAS  
10 INTENDING, WHAT HE WAS SUGGESTING.

11 THE COURT: OVERRULED.

12 YOU MAY ANSWER THE QUESTION.

13 THE WITNESS: WOULD YOU MIND RESTATING THAT? I'M  
14 SORRY.

15 BY MR. ARCHER:

16 Q. SURE. SO MY QUESTION IS, WHEN YOU'RE ASKING AGENT -- OR  
17 YOU'RE SUGGESTING THAT AGENT YESENSKY GET THIS INFORMATION BY A  
18 U.S. WARRANT, ARE YOU SUGGESTING THAT HE GET IT BY U.S. WARRANT  
19 AND THEN TURN IT OVER SUBJECT TO AN MLAT OR A LETTER ROGATORY?

20 A. BASED ON MY UNDERSTANDING, THAT'S NOT HOW MLATS OR LETTERS  
21 ROGATORY WORK.

22 Q. OKAY. INDEED, YOU WERE SUGGESTING THAT HE SHARE IT  
23 DIRECTLY TO EUROPEAN LAW ENFORCEMENT WITHOUT SEPARATE LEGAL  
24 PROCESS; CORRECT?

25 A. WE'RE NOT -- WE'RE NOT IN A POSITION TO DICTATE WHAT

1 HAPPENS AFTER WE COMPLY WITH LEGAL PROCESS.

2 SO IF OUR COMPANY RECEIVES A U.S. SEARCH WARRANT SIGNED BY  
3 A U.S. MAGISTRATE JUDGE, THEN THAT IS -- THAT WILL BE COMPLIED  
4 WITH.

5 Q. OKAY. I UNDERSTAND REGARDING YOUR COMPLIANCE.

6 BUT IN THIS E-MAIL, ARE YOU SUGGESTING THAT HE SHARE THEM  
7 ON AN LE BASIS? AND THAT'S A LAW ENFORCEMENT BASIS; CORRECT?

8 A. THAT'S CORRECT.

9 Q. OKAY. AND SO FROM YOUR EXPERIENCE AS AN AGENT AND WORKING  
10 IN YOUR CURRENT POSITION, A LAW ENFORCEMENT BASIS SHARING WOULD  
11 BE A DIRECT SHARING; CORRECT?

12 A. MY UNDERSTANDING IS THAT IF BOTH AGENCIES IN DIFFERENT  
13 COUNTRIES HAVE SORT OF PARALLEL OR JOINT INVESTIGATIONS GOING,  
14 THEN THEY HAVE THE ABILITY TO SHARE THAT INFORMATION ON THIS  
15 SORT OF LAW ENFORCEMENT TO LAW ENFORCEMENT BASIS.

16 Q. OKAY. WHAT DO YOU BASE THAT BELIEF ON?

17 A. BOTH FROM MY PERSONAL EXPERIENCE IN LAW ENFORCEMENT, AS  
18 WELL AS INFORMATION I'VE LEARNED FROM, SAY, CONFERENCES OR,  
19 LIKE, CYBER SECURITY CONFERENCES.

20 Q. SO ARE YOU AWARE OF ANY EXCEPTION IN THE MLAT THAT PERMITS  
21 LAW ENFORCEMENT TO SHARE DIRECTLY WITHOUT GETTING AN MLAT?

22 A. I'M ACTUALLY NOT REALLY AWARE OF HOW MLATS WORK IN TERMS  
23 OF DIPLOMATIC, YOU KNOW, INTERNATIONAL RELATIONS.

24 Q. OKAY. BUT YOU'RE NOT SUGGESTING THAT AGENT YESENSKY GET A  
25 SEPARATE COURT ORDER TO PERMIT HIM TO SHARE IT LAW ENFORCEMENT



1 TO LAW ENFORCEMENT; CORRECT?

2 A. YEAH. I SHOULD CLARIFY THAT IN MY LAST QUESTION, OR MY  
3 RESPONSE, RATHER.

4 AN MLAT, OR AT LEAST MY UNDERSTANDING OF AN MLAT, IS TWO  
5 GOVERNMENTS MAKING A REQUEST TO EACH OTHER. THE RECIPIENT  
6 GOVERNMENT OF THE MLAT THEN COMPLIES WITH THEIR OWN LEGAL  
7 PROCESS. SO, FOR EXAMPLE, IF THE U.K. WERE TO SEND AN MLAT TO  
8 IRELAND, AN IRISH LAW ENFORCEMENT OFFICER WOULD GO BEFORE AN  
9 IRISH JUDGE AND GET AN IRISH SEARCH WARRANT AND GO TO YAHOO.

10 SO WE DON'T ACTUALLY -- WE NEVER SEE MLATS. WE JUST SEE  
11 THE HOST COUNTRY LEGAL PROCESS, IF THAT MAKES SENSE.

12 Q. AND YOUR UNDERSTANDING OF THE PURPOSE OF IT, THEN, IS TO  
13 RESPECT THE INDIVIDUAL HOST COUNTRY'S SERVICE, OR LEGAL  
14 PROCESS? DOES THAT MAKE SENSE?

15 A. ESPECIALLY FOR COUNTRIES -- FOR COMPANIES LIKE OURS THAT  
16 ARE PRIMARILY U.S. COMPANIES, WE ARE NOT EQUIPPED TO HANDLE  
17 REQUESTS FROM COUNTRIES WHERE WE CAN'T -- WE DON'T KNOW WHAT  
18 HAPPENS, LIKE RUSSIA, FOR EXAMPLE.

19 Q. OKAY. BUT YOU INDICATED A SECOND AGO THAT THE MLAT WOULD  
20 THEN REQUIRE PROPER LEGAL PROCESS TO BE SOUGHT IN BOTH THE  
21 REQUESTING COUNTRY AND THE, AND THE COUNTRY REQUESTED OF. IS  
22 THAT --

23 A. CERTAINLY THE RECIPIENT COUNTRY, THEY HAVE TO -- LIKE,  
24 IRELAND OR THE UNITED STATES, THEY HAVE TO GET WHATEVER LEGAL  
25 PROCESS IS IN THEIR COUNTRY, LIKE HERE IT'S A SEARCH WARRANT,

1 AND SERVE IT ON THE COMPANY.

2 BUT I ACTUALLY DON'T KNOW WHAT THE REQUIREMENT OF THE  
3 SENDING COUNTRY WOULD BE.

4 Q. AND SO IT WOULD BE -- WOULDN'T IT THEN BE ACCURATE TO SAY  
5 THAT SHARING SOMETHING DIRECTLY WITHOUT GOING THROUGH THAT  
6 PROCESS WOULD CIRCUMVENT THE MLAT PROCESS?

7 A. I WOULDN'T CHARACTERIZE IT LIKE THAT, AND IT'S BECAUSE I  
8 DON'T -- I DON'T KNOW IF THE PURPOSE OF THE MLAT PROCESS IS  
9 TO -- YOU KNOW, LIKE, WE'RE CONCERNED WITH USER PRIVACY. WE  
10 WANT TO MAKE SURE OUR USERS' PRIVACY IS PROTECTED, SO WE  
11 REQUIRE SEARCH WARRANTS TO RESPECT THE PRIVACY OF OUR USERS.

12 I DON'T KNOW IF AN MLAT, THE SORT OF FRAMEWORK, THE ACTUAL  
13 FRAMEWORK OF THAT IS DESIGNED TO, YOU KNOW, HAVE THAT SIMILAR  
14 TYPE OF PROTECTION IN PLACE.

15 THERE'S DIPLOMATIC RELATIONS BETWEEN COUNTRIES, BUT THAT'S  
16 SORT OF WAY OUTSIDE MY SCOPE OF EXPERTISE.

17 Q. UNDERSTOOD. I'M NOT ASKING YOU FOR A LEGAL OPINION.

18 BUT YOU UNDERSTAND CIRCUMVENT IS --

19 MS. HARRIS: OBJECTION. THIS IS BECOMING  
20 ARGUMENTATIVE, YOUR HONOR, AND IT'S REPETITIVE AND IT'S BEEN  
21 ASKED AND ANSWERED.

22 MR. ARCHER: I'M ASKING WHETHER THE -- WELL, I'M  
23 ABOUT TO ASK WHETHER THE WITNESS UNDERSTANDS WHAT I MEAN BY  
24 "CIRCUMVENT."

25 MS. HARRIS: THAT'S ARGUMENTATIVE, YOUR HONOR.

1 THE COURT: I'LL ALLOW ONE MORE QUESTION, BUT IT HAS  
2 BEEN ASKED AND ANSWERED AND I'D LIKE YOU TO MOVE ON.

3 MR. ARCHER: OKAY.

4 THE COURT: GO AHEAD, YOU CAN ASK ONE MORE QUESTION  
5 ON THIS. YOU'VE ALREADY ASKED WHETHER HE WAS SUGGESTING HOW TO  
6 CIRCUMVENT THE MLAT PROCESS, SO --

7 MR. ARCHER: OKAY.

8 Q. WOULD YOUR SUGGESTION PERMIT THE AUTHORITIES IN, IN THIS  
9 CASE, THE U.K. TO AVOID HAVING TO GO THROUGH THE MLAT PROCESS?

10 MS. HARRIS: OBJECTION. CALLS FOR A LEGAL CONCLUSION  
11 AND FOR SPECULATION.

12 MR. ARCHER: HE'S THE ONE MAKING THE SUGGESTION.

13 MS. HARRIS: AS TO HOW THE EFFECT OF THE SUGGESTION  
14 AND HOW IT WOULD AFFECT GOVERNING BODIES IN OTHER COUNTRIES?  
15 THE WITNESS DOESN'T HAVE THE REQUISITE KNOWLEDGE FOR THAT.

16 MR. ARCHER: IT APPEARS FROM HIS E-MAIL HE DOES  
17 BECAUSE THAT'S EXACTLY WHAT HE'S SUGGESTING.

18 THE COURT: WELL, THERE'S NO NEED TO ARGUE.

19 GO AHEAD. OVERRULED.

20 YOU CAN ANSWER THIS QUESTION AND THEN I'D LIKE US --  
21 ACTUALLY, WE MAY NEED TO TAKE OUR BREAK.

22 BUT GO AHEAD, PLEASE.

23 THE WITNESS: WOULD YOU MIND RESTATING THAT?

24 BY MR. ARCHER:

25 Q. SURE. SO WOULD YOUR SUGGESTION -- IN YOUR UNDERSTANDING

1 OF THIS, WOULD YOUR SUGGESTION TO AGENT YESENSKY TO SHARE THIS  
2 ON A LAW ENFORCEMENT BASIS ALLOW THE AUTHORITIES IN THE U.K. TO  
3 AVOID HAVING TO GO THROUGH THE MLAT PROCESS?

4 A. SO OUR -- THE PURPOSE OF THIS STATEMENT WAS, AGAIN, AS I  
5 MENTIONED EARLIER, WE WERE CONCERNED WITH THE HANDS-ON ABUSE OF  
6 CHILDREN AND THE AMOUNT OF TIME THE MLAT TAKES.

7 SO WE WANTED TO --

8 MR. ARCHER: YOUR HONOR, I'D MOVE TO STRIKE AS  
9 NONRESPONSIVE.

10 THE COURT: OVERRULED. PLEASE, ENOUGH ARGUING.  
11 GO AHEAD. ANSWER THE QUESTION.

12 THE WITNESS: SO WE WANTED TO TRY TO HIGHLIGHT AN  
13 OPTION, BASED ON OUR COMPANY'S EXPERIENCE DEALING WITH MLAT --  
14 WE ACTUALLY PARTICIPATE IN MLAT REFORM PROJECT. AS A COMPANY,  
15 WE BELIEVED THAT MLATS WERE IMPORTANT. BUT THE WAY THAT  
16 THEY'RE IMPLEMENTED RIGHT NOW IS VERY CUMBERSOME AND DOESN'T  
17 RESPECT THE SORT OF REALLY URGENT NEEDS THAT WE HAD FELT THAT  
18 WE HAD WITH THE CHILD ABUSE.

19 SO CERTAINLY I WAS DIRECTING THE AGENT TO GET U.S. LEGAL  
20 PROCESS WHICH, IN OUR EXPERIENCE, IS MUCH FASTER.

21 BY MR. ARCHER:

22 Q. OKAY. YOU ALSO EXPRESSED A CONCERN THAT IF THIS WERE  
23 SHARED ON A LAW ENFORCEMENT BASIS, IT MAY NOT BE ABLE TO BE  
24 USED AT TRIAL; IS THAT ACCURATE?

25 A. UM --

1 Q. IF YOU LOOK IN PARAGRAPH 1 THERE.

2 A. RIGHT. AND AGAIN, THAT'S SORT OF -- AND I THINK I'M  
3 PROBABLY SPEAKING OUTSIDE MY COMFORT ZONE HERE, AND WAS AT THE  
4 TIME -- BUT MY UNDERSTANDING, VERY LIMITED UNDERSTANDING, IS  
5 THAT FOR A TRIAL, THERE WOULD NEED TO BE SOME SORT OF  
6 AUTHENTICATION OF RECORDS, AND INFORMATION SHARED LAW  
7 ENFORCEMENT TO LAW ENFORCEMENT WOULDN'T HAVE THAT  
8 AUTHENTICATION STATEMENT THAT A COMPANY MIGHT PROVIDE TO  
9 CERTIFY THE RECORDS.

10 MR. ARCHER: OKAY. WOULD THE COURT LIKE TO TAKE A  
11 BREAK OR SHOULD I MOVE ON?

12 THE COURT: OKAY. WHY DON'T WE -- IT IS ALREADY  
13 12:02. WE'LL TAKE A ONE HOUR BREAK FOR LUNCH AND BE BACK AT,  
14 LET'S SAY 1:05 SINCE IT'S 12:02.

15 ALL RIGHT. THANK YOU VERY MUCH.

16 MR. ARCHER: THANK YOU.

17 THE COURT: WE'LL SEE YOU BACK AT 1:05.

18 (THE LUNCH RECESS WAS TAKEN FROM 12:02 P.M. UNTIL  
19 1:07 P.M.)  
20  
21  
22  
23  
24  
25

**AFTERNOON SESSION**

THE COURT: GOOD AFTERNOON. WELCOME BACK.

PLEASE GO AHEAD, MR. ARCHER.

MR. ARCHER: THANK YOU, YOUR HONOR.

Q. SO I'M PUTTING UP ON THE SCREEN NOW -- THIS IS FROM  
DEFENSE EXHIBIT RR. IT IS BATES 1680.

DO YOU RECALL SENDING THIS E-MAIL, MR. ZADIG?

A. I DO, YES.

Q. OKAY. SO IS IT FAIR TO DESCRIBE THIS AS ANOTHER  
DISCUSSION WITH AGENT YESENSKY ABOUT A LAW ENFORCEMENT TO LAW  
ENFORCEMENT SHARING ARRANGEMENT?

A. THAT IS INCLUDED IN THE E-MAIL, AS WELL AS QUESTIONS ABOUT  
MLAT'S PROCESS, YES.

Q. OKAY. SO -- BUT THE REASON THE LAW ENFORCEMENT TO LAW  
ENFORCEMENT WAS DISCUSSED IS BECAUSE IT'S RELATED TO THE MLAT  
PROCESS; IS THAT CORRECT?

A. YES, THAT'S CORRECT.

Q. OKAY. THAT'S -- SO THAT'S THE REASON IT'S IN THIS E-MAIL;  
IS THAT CORRECT?

A. THAT'S CORRECT.

Q. SO YOU'RE DIRECTING AGENT YESENSKY THERE TO FOUR ACCOUNTS  
THAT HAVE BEEN INQUIRED OF YOU BY THE GERMAN AUTHORITIES; IS  
THAT CORRECT?

A. THAT'S CORRECT. THOSE WERE IN THE, ONE OF OUR PRIOR  
REFERRALS TO NCMEC, YES.

1 Q. OKAY. SO WHAT WAS YOUR INTENT IN DIRECTING AGENT YESENSKY  
2 TO THOSE, TO THOSE FOUR ACCOUNTS?

3 A. SIMILAR TO THE LAST E-MAIL WE DISCUSSED BEFORE OUR BREAK,  
4 THIS WAS A CASE WHEN THE GERMAN LAW ENFORCEMENT REACHED OUT TO  
5 ME AND I NOTIFIED THE FBI ABOUT THAT REACH OUT.

6 Q. OKAY. BUT WHAT WAS YOUR INTENT IN DOING SO?

7 A. I THINK IT WAS SIMILAR TO LAST TIME IN THAT, AS I  
8 MENTIONED EARLIER, GERMAN LAW ENFORCEMENT WAS NOT ABLE TO GET  
9 ACCOUNT CONTENT WITHOUT AN MLAT TO IRELAND, SO I WAS NOTIFYING  
10 THE FBI ABOUT THIS INQUIRY BECAUSE THIS WAS A SET OF USERS THAT  
11 WE HAD PROVIDED IN OUR INITIAL REFERRAL -- WELL, ONE OF OUR  
12 SUBSEQUENT REFERRALS TO NCMEC.

13 Q. OKAY. SO MAYBE I CAN ASK IT A DIFFERENT WAY. WHAT DID  
14 YOU HOPE TO HAPPEN AS A RESULT OF YOU SENDING THIS E-MAIL?

15 A. SO THIS WAS AN INDIVIDUAL WHO, AS I MENTIONED EARLIER, WAS  
16 A -- HE OPERATED AN ORPHANAGE. HE WAS A GERMAN NATIONAL  
17 RESIDING IN THE PHILIPPINES OPERATING AN ORPHANAGE AND, BASED  
18 ON THE INFORMATION WE PROVIDED, WAS ABUSING THE CHILDREN IN HIS  
19 CARE.

20 THIS WAS VERY CONCERNING TO US AND WE WANTED TO ENSURE  
21 THAT SWIFT ACTION WOULD BE TAKEN TO RESCUE THOSE CHILDREN.

22 Q. OKAY. WHAT DO YOU MEAN BY "SWIFT ACTION"?

23 A. WELL, THE MLAT, AS I DESCRIBED EARLIER, IS KIND OF THE  
24 OPPOSITE OF SWIFT ACTION. IT'S A VERY TEDIOUS PROCESS AND  
25 TAKES A LONG TIME.

1           AND WE WERE CONCERNED THAT THERE WAS MORE OF AN EXIGENCY  
2           IN THIS SITUATION WITH THE SORT OF HANDS-ON ABUSE GOING ON WITH  
3           THIS INDIVIDUAL AND THE CHILDREN.

4           Q.    OKAY.  SO WAS IT YOUR HOPE, THEN, THAT BY CONNECTING THESE  
5           TWO LAW ENFORCEMENT AGENCIES, IT WOULD AID IN THE FASTER  
6           APPREHENSION OF THAT GENTLEMAN?

7           A.    NOT NECESSARILY THE APPREHENSION, BUT HOPEFULLY THE RESCUE  
8           OF THE CHILDREN, YES.

9           Q.    OKAY.  IS IT YOUR UNDERSTANDING AS A LAW ENFORCEMENT  
10          AGENT, YOUR PRIMARY RESPONSIBILITY IS TO ARREST PEOPLE AND  
11          INVESTIGATE CASES?

12          A.    ARE YOU ASKING ME AS A LAW ENFORCEMENT PERSON?

13          Q.    SURE, IN YOUR EXPERIENCE IN LAW ENFORCEMENT.

14          A.    I MEAN, I WORKED AT AN AGENCY THAT WAS A LITTLE BIT  
15          DIFFERENT, IT WAS INSPECTOR GENERAL, AND WE WERE CONCERNED WITH  
16          THE OPERATION OF THE AGENCY.

17                SO I DON'T HAVE A WHOLE LOT OF DIRECT EXPERIENCE AROUND  
18          THAT.

19          Q.    OKAY.  SO -- BUT YOU UNDERSTOOD THAT THE METHOD BY WHICH  
20          THEY WOULD DO THIS WOULD BE TO GO AND ARREST THAT PERSON;  
21          CORRECT?

22          A.    I MEAN, BASED ON WHAT HAPPENS IN THE UNITED STATES, THAT'S  
23          NOT ALWAYS WHAT HAPPENS.  YOU KNOW, INDIVIDUALS -- CHILDREN  
24          MIGHT GET RESCUED AND THAT INDIVIDUAL MIGHT BE CHARGED AT SOME  
25          LATER DATE.  THERE MIGHT NOT BE AN ARREST THAT OCCURS.



1 Q. OKAY. DID YOU EXPECT THAT BY SHARING THIS INFORMATION, IT  
2 WOULD AID THEM IN POTENTIALLY ARRESTING THAT PERSON?

3 A. I WAS SEEKING TO HIGHLIGHT A PREVIOUSLY IDENTIFIED USER IN  
4 A PRIOR SUPPLEMENT AND LET THE FBI, WHO WE MADE -- WHO WE  
5 TALKED TO ABOUT THIS INITIAL CASE AFTER WE MADE THE NCMEC  
6 REFERRAL, THAT THE GERMAN BKA WAS INQUIRING AND, YOU KNOW, IT  
7 WOULD BE BETTER IF THE LAW ENFORCEMENT PEOPLE WORKED IT OUT  
8 AND, YOU KNOW, WAS CONSISTENT IN THEIR APPROACH TO US.

9 Q. I'M SHOWING WHAT IS MARKED AS -- I'M SORRY -- WHAT IS  
10 BATES 1771 FROM EXHIBIT RR.

11 DO YOU RECALL THIS EXCHANGE WITH AGENT YESENSKY?

12 A. I DO, YES.

13 Q. OKAY. AND SO IS IT YOUR UNDERSTANDING THAT AGENT YESENSKY  
14 TOOK SOME ACTION BASED ON YOUR SUGGESTION?

15 A. HE SAID HE WAS IN TOUCH WITH THEM, YES.

16 Q. OKAY. SO THE DECEMBER 2014 REPORT INCLUDED BOTH BUYERS  
17 AND SELLERS; CORRECT?

18 A. THAT'S CORRECT.

19 Q. OKAY. AND FOR EACH OF THE BUYERS AND SELLERS, THERE  
20 WAS -- IS IT SAFE TO SAY THERE WAS AT LEAST ONE YAHOO ACCOUNT  
21 ASSOCIATED WITH EACH IDENTIFIED BUYER OR SELLER?

22 A. NOT ALWAYS. WITH THE SELLERS, I WOULD SAY THAT IS THE  
23 CASE.

24 WITH THE BUYERS, IN SOME CASES WE SAW WHAT WE BELIEVED TO  
25 BE -- SO A BUYER COULD COMMUNICATE WITH A SELLER OVER YAHOO

1 MESSENGER, WHICH IS PART OF THE YAHOO ACCOUNT, OR OVER E-MAIL,  
2 WHICH DOESN'T NECESSARILY REQUIRE A YAHOO ACCOUNT. IN SOME  
3 SITUATIONS WE OBSERVED SELLERS SENDING POTENTIAL CHILD  
4 PORNOGRAPHY OVER E-MAIL TO NON-YAHOO RECIPIENTS.

5 Q. OKAY. GENERALLY, THOUGH, WAS IT -- IS IT FAIR TO SAY THAT  
6 THE MAJORITY OF BUYERS AND SELLERS IDENTIFIED POSSESSED YAHOO  
7 MESSENGER OR MAIL ACCOUNTS?

8 A. PROBABLY A MAJORITY, YES.

9 Q. OKAY. AND AT THE POINT IN DECEMBER 2014, THOSE PEOPLE  
10 WERE INCLUDED IN THAT REPORT BECAUSE YOU HAD DISCOVERED  
11 EVIDENCE OF CHILD SEXUAL ABUSE OR ATTEMPTED CHILD SEXUAL ABUSE;  
12 IS THAT CORRECT?

13 A. SO THE SELLERS APPEARED TO BE ADVERTISING, YOU KNOW, THE  
14 ABUSE OF CHILDREN OVER THIS LIVE STREAMING WEBCAM, AND THE  
15 BUYERS, THE PEOPLE WE CALL BUYERS, WERE -- THEY APPEARED TO BE  
16 INQUIRING AND SORT OF REQUESTING THAT TYPE OF INFORMATION, YES.

17 Q. OKAY. SO, BUT YOU WERE -- TO QUALIFY AS A BUYER FOR THAT  
18 REPORT, YOU WOULD HAVE TO HAVE ENGAGED IN SOMETHING THAT LED  
19 YOU AND YOUR TEAM TO BELIEVE THAT THEY WERE ENGAGED IN ILLEGAL  
20 ACTIVITY RELATED TO, TO THE SEXUAL EXPLOITATION OF CHILDREN?  
21 IS THAT FAIR TO SAY?

22 A. I DON'T KNOW IF "ILLEGAL" IS THE -- WE'RE NOT LAW  
23 ENFORCEMENT OR ATTORNEYS AND SO WE WEREN'T TRYING TO MAKE A  
24 DETERMINATION OF LEGALITY.

25 BUT IT WAS, IS THIS PERSON TRYING TO USE OUR SERVICE, OUR

1 PLATFORM, TO ENGAGE IN, YOU KNOW, THE PURCHASE OF CHILD  
2 EXPLOITATION MATERIALS OR LIVE STREAM ABUSE?

3 Q. OKAY. AND AT THAT POINT, YOU COULD HAVE SHUT DOWN EVERY  
4 ONE OF THOSE ACCOUNTS; CORRECT?

5 A. PROBABLY MOST OF THEM, WE COULD HAVE, YES.

6 Q. OKAY. BUT, I MEAN, AS THE HEAD OF -- AS THE HEAD OF THE  
7 ECIT, YOU WOULD HAVE HAD THE AUTHORITY TO SHUT DOWN ALL OF  
8 THOSE ACCOUNTS; CORRECT?

9 A. SO WE TRY NOT TO SHUT DOWN ACCOUNTS UNLESS, LIKE, IF AN  
10 ACCOUNT CONTAINS CONTRABAND, FOR EXAMPLE. SO CHILD PORNOGRAPHY  
11 IN IT, LIKE ACTUAL IMAGES OR VIDEOS, THAT IS A SITUATION WHERE  
12 WE WANT TO SHUT THAT ACCOUNT DOWN BECAUSE WE DON'T WANT THAT  
13 MATERIAL TO BE DISSEMINATED BEYOND OUR PLATFORMS WHICH COULD  
14 INTRODUCE LEGAL RISK FOR US.

15 FOR ACCOUNTS WHERE THEY ARE JUST IN THE PROCESS OF ASKING,  
16 YOU KNOW, "HEY, ARE YOU SELLING CHILDREN," OR "DO YOU HAVE THIS  
17 TYPE OF CHILD AVAILABLE," OR WHAT HAVE YOU, IN THOSE SITUATIONS  
18 WE TEND TO NOT SHUT DOWN.

19 Q. OKAY. BUT YOU HAVE THE -- WHAT I'M ASKING IS, ON YOUR  
20 SYSTEM, ASIDE FROM THE DISCRETION THAT YOU EXERCISED AT THAT  
21 POINT, YOU HAD THE ABILITY TO SHUT DOWN ALL OF THE ACCOUNTS  
22 THAT YOU IDENTIFIED; IS THAT CORRECT?

23 A. WE WOULD HAVE HAD TO MAKE SURE THAT EACH WAS VIOLATING OUR  
24 TERMS OF SERVICE. BUT IF THAT WAS THE DETERMINATION, WE COULD  
25 HAVE, YES.

1 Q. OKAY. SO A -- OKAY.

2 BUT A MODERATOR -- SO SOMEONE ON THE MODERATION TEAM CAN  
3 DO THAT WITHOUT ANY ADDITIONAL AUTHORITY; CORRECT?

4 A. I MEAN, THEY USE WHAT'S CALLED AN ABUSE GRID, SO IT'S A --  
5 IT'S A LIST OF CONDUCTS IN A TABLE WITH THE VARIOUS TERMS OF  
6 SERVICE VIOLATIONS THAT MAY OR MAY NOT BE PRESENT. IF THEY  
7 DETERMINE THAT THE CONDUCT IN QUESTION VIOLATES A PART OF THE  
8 ABUSE GRID, THEN THEY CAN TERMINATE THE ACCOUNT, YES.

9 Q. OKAY. SO IF SOMEONE IS NEGOTIATING FOR THE SALE OF CHILD  
10 SEXUAL EXPLOITATION MATERIAL ON THE PLATFORM, YOU COULD AT THAT  
11 POINT SHUT THAT ACCOUNT DOWN; CORRECT?

12 A. I THINK AT OUR DISCRETION WE COULD, YES.

13 Q. OKAY. BUT IN DECEMBER OF 2014, THOSE ACCOUNTS -- THE  
14 ACCOUNTS IN THE REPORT WERE NOT SHUT DOWN; IS THAT CORRECT?

15 A. ANY ACCOUNT WE FILED A CYBERTIP ON WAS PUT IN A  
16 DEACTIVATED STATE.

17 BUT OTHERS THAT DID NOT HAVE THE CHILD SEXUAL ABUSE  
18 MATERIAL IMAGES OR VIDEO THAT WE WERE ABLE TO READILY VIEW AND  
19 PUT EYES ON, WE DID NOT SHUT DOWN.

20 Q. SO ON THE ONE HAND THERE'S AN URGENCY -- YOU TESTIFIED  
21 PREVIOUSLY THAT THERE'S AN URGENCY TO REFERRING THIS  
22 INFORMATION TO LAW ENFORCEMENT IN OCTOBER OF 2014 AND  
23 DECEMBER OF 2014.

24 DO YOU RECALL TESTIFYING TO THAT?

25 A. CORRECT, YES.

1 Q. OKAY. AND YOU TESTIFIED ALSO THAT THE URGENCY WAS BASED  
2 ON THE NEED TO STOP THE POTENTIAL EXPLOITATION OF CHILDREN; IS  
3 THAT CORRECT?

4 A. THAT'S CORRECT.

5 Q. OKAY. AND SO FROM THE CHAT LOGS THAT IDENTIFIED ACCOUNTS,  
6 OR THE CHAT SNIPPETS THAT IDENTIFIED ACCOUNTS THAT MET YOUR  
7 THRESHOLD FOR REFERRING THEM TO THE FBI, OR THROUGH NCMEC, THAT  
8 THRESHOLD INCLUDED A DETERMINATION THAT THEY WERE ENGAGED IN  
9 SOME SORT OF EXPLOITATIVE BEHAVIOR; IS THAT CORRECT?

10 A. AT LEAST POTENTIALLY, YES.

11 Q. OKAY. BUT THOSE ACCOUNTS WERE NOT SHUT DOWN AT THAT  
12 POINT? IS THAT -- UNLESS THERE WAS THE PRESENCE OF CHILD  
13 PORNOGRAPHY, EFFECTIVELY?

14 A. YES. IF WE COULD OBSERVE CHILD PORNOGRAPHY, LIKE, FOR  
15 EXAMPLE, IN THE USER PROFILE PICTURES, AT THAT TIME WE WOULD  
16 SHUT THOSE ACCOUNTS DOWN.

17 HOWEVER, IF THE ACCOUNT DID NOT HAVE, YOU KNOW,  
18 ESSENTIALLY READILY DISCERNIBLE CHILD PORNOGRAPHY AND OUR  
19 COMPANY WAS NOT ESSENTIALLY ON NOTICE THAT THAT WAS THERE, THEN  
20 WE DID NOT SHUT THE ACCOUNT DOWN.

21 Q. OKAY. SO IT WAS IN YAHOO'S DISCRETION TO PERMIT THE  
22 ACCOUNTS THAT HAD BEEN IDENTIFIED AS ENGAGING IN NEGOTIATIONS  
23 BY CHAT ONLY FOR THE SALE AND EXPLOITATION OF CHILDREN, IT WAS  
24 IN YAHOO'S DISCRETION TO NOT SHUT THOSE ACCOUNTS DOWN AT THAT  
25 POINT?

1 A. THAT'S CORRECT.

2 Q. OKAY. WHAT I'M PUTTING UP NEXT IS AGAIN FROM DEFENSE  
3 EXHIBIT RR. THIS IS BATES 1649.

4 MR. ZADIG, DO YOU RECOGNIZE THAT E-MAIL?

5 A. I DO, YES.

6 Q. OKAY. SO THAT'S AN E-MAIL FROM JULY 23RD OF 2015;  
7 CORRECT?

8 A. THAT'S CORRECT.

9 Q. OKAY. AND IN THAT E-MAIL, IS IT ACCURATE TO SAY THAT YOU  
10 ARE NOTIFYING AGENT YESENSKY OF WORK ON A NEW PHILIPPINES CASE?

11 A. THE PURPOSE OF THIS E-MAIL, AS INDICATED BY THE SUBJECT  
12 LINE, WAS AROUND THE EUROPOL TRIP.

13 THE PURPOSE WAS NOT TO NOTIFY, AS IN SEND OFFICIAL NOTICE,  
14 OF A NEW INVESTIGATION UNDERWAY.

15 HOWEVER, BECAUSE I WAS ALREADY ENGAGED IN A COMMUNICATION  
16 WITH HIM ABOUT A DIFFERENT TOPIC, I DID MENTION THAT WE WERE  
17 BEGINNING A NEW PHILIPPINES CASE AND INFORMED HIM THAT WE  
18 WOULDN'T BE ABLE TO SHARE ANYTHING UNTIL WE FINISHED, THAT'S  
19 CORRECT.

20 Q. OKAY. SO THE TWO-THIRDS OF YOUR -- IS IT ACCURATE TO SAY  
21 THAT TWO-THIRDS OF THIS E-MAIL IS SPENT DISCUSSING THIS NEW  
22 INVESTIGATION?

23 A. IF -- IF WE COUNT EACH PARAGRAPH AS BEING A THIRD, I WOULD  
24 SAY ONE-THIRD OF IT IS.

25 Q. OKAY. SO THE OVERLAPPING OF THE U.K. BUYERS IS NOT PART

1 OF THE NEW INVESTIGATION?

2 A. I'M NOT SURE WHAT THAT REFERS TO. I INITIALLY THOUGHT  
3 THAT IT REFERRED TO OUR PRIOR INVESTIGATIONS BECAUSE I WAS  
4 ASKING FOR ESSENTIALLY FEEDBACK OR CLOSURE ON SOME OF THE PRIOR  
5 REFERRALS.

6 Q. SO THE NEW PHILIPPINES CASE, YOU INDICATE THERE THAT YOU  
7 DISCOVERED IT YESTERDAY, SO WOULD THAT BE, I GUESS, WEDNESDAY,  
8 JULY THE 22ND?

9 A. I IMAGINE SO, YES.

10 Q. OKAY. AND JUST SO WE'RE CLEAR, YOU PREVIOUSLY TESTIFIED  
11 THAT THERE WAS A PORTION OF THE INVESTIGATION THAT OCCURRED AS  
12 A RESULT OF A CONVERSATION WITH THE LAW ENFORCEMENT OFFICER  
13 FROM TEXAS; IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. OKAY. SO THAT CONVERSATION REVEALED INFORMATION TO YOU  
16 THAT THAT -- THE GENTLEMAN THAT WAS ARRESTED IN TEXAS HAD SPENT  
17 SOMEWHERE IN THE NEIGHBORHOOD OF \$50,000 ON WEBCAM SHOWS; IS  
18 THAT CORRECT?

19 A. YES, THAT'S CORRECT.

20 Q. OKAY. SO THAT'S INFORMATION THAT YOU LEARNED FROM THE LAW  
21 ENFORCEMENT OFFICER AFTER THAT GENTLEMAN'S ARREST IN TEXAS?

22 A. YES.

23 Q. OKAY. AND I THINK YOU TESTIFIED BEFORE THAT THE GENESIS  
24 OF YOU INVESTIGATING THESE PARTICULAR ACCOUNTS WAS AS A RESULT  
25 OF THAT CONVERSATION WITH THE LAW ENFORCEMENT OFFICER IN TEXAS.

1 A. PRIMARILY, YES, ALTHOUGH I BELIEVE, IN OUR LAST SESSION, I  
2 ALSO DID REFERENCE THIS PROACTIVE SCANNING AS WELL.

3 Q. OKAY. WHAT DO YOU MEAN BY "PROACTIVE SCANNING," IF I MAY  
4 ASK?

5 A. SO ONE THING WE OBSERVED FROM OUR PRIOR TWO REFERRALS,  
6 THAT BEING THE OCTOBER AND DECEMBER REFERRALS, WAS THAT MANY  
7 USERS HAD ACTUALLY OPTED TO PUT CHILD PORNOGRAPHY IMAGES AS  
8 THEIR PROFILE PICTURES.

9 OBVIOUSLY THAT IS NOT WHAT THE PRODUCT WAS INTENDED TO DO.  
10 THAT'S SUPPOSED TO BE LIKE A SORT OF SELFIE OF YOU, NOT OF  
11 CHILD PORNOGRAPHY.

12 SO I HAD BEEN WORKING FOR A PERIOD OF SOME MONTHS WITH OUR  
13 ENGINEERING TEAM TO ENGAGE IN A PROACTIVE SCAN ACROSS OUR YAHOO  
14 MESSENGER PROFILE CORPUS TO IDENTIFY USERS WHO MIGHT HAVE  
15 PREVIOUSLY OBSERVED CHILD PORNOGRAPHY AS THEIR PROFILE PICTURE.  
16 WE USE AN ALGORITHM CALLED PHOTO DNA, WHICH IS AN INDUSTRY  
17 STANDARD THAT TAKES PREVIOUSLY SEEN CHILD PORNOGRAPHY, BUILDS A  
18 HASH OF IT, AND THEN WE CAN USE IT TO SCAN THROUGH  
19 USER-GENERATED CONTENT TO FIND OTHER INSTANCES OF THAT CHILD  
20 PORNOGRAPHY.

21 Q. OKAY. I'D LIKE TO CLARIFY ONE THING. THE JRWOLFEN02  
22 ACCOUNT WAS NOT ONE THAT WAS DISCOVERED AS A RESULT OF PHOTO  
23 DNA; CORRECT?

24 A. IT WAS NOT.

25 Q. OKAY. SO IT APPEARS THAT IN THE ONE DAY SINCE THAT



1 INVESTIGATION BEGAN, YOU WERE ABLE TO IDENTIFY THAT THERE WAS  
2 OVERLAP WITH BUYERS FROM THE PREVIOUS REFERRALS. IS THAT  
3 ACCURATE?

4 A. UM -- OH, I SEE. PROBABLY, YES, IN OUR INITIAL, INITIAL  
5 INQUIRY INTO IT AFTER THAT DISCOVERY, YES.

6 Q. OKAY. AND A DIFFERENT SET OF SELLERS THAN THE FIRST ONE,  
7 SO THAT WAS AGAIN DISCOVERED IN THE FIRST DAY; IS THAT CORRECT?

8 A. CORRECT.

9 Q. OKAY. AND LOTS OF TRAVELERS AGAIN? DO YOU SEE THAT AS  
10 WELL?

11 A. I DO SEE THAT, YES.

12 Q. OKAY. AND JUST TO CLARIFY, TRAVELERS WOULD BE PEOPLE THAT  
13 YOU HAD IDENTIFIED AS POTENTIALLY TRAVELING FOR THE PURPOSE OF  
14 HAVING SEX WITH CHILDREN BASED ON THEIR CHAT AND E-MAIL  
15 COMMUNICATIONS?

16 A. THAT'S CORRECT.

17 Q. OKAY. AND SO WHEN YOU'RE TALKING ABOUT THE TRAVELERS  
18 HERE, HOW WOULD YOU IDENTIFY THE TRAVELERS, SOMEONE AS A  
19 POTENTIAL TRAVELER FOR THE PURPOSES OF WHAT YOU'RE TELLING  
20 AGENT YESENSKY?

21 A. WELL, I DIDN'T TELL AGENT YESENSKY HOW WE HAD MADE THAT  
22 DETERMINATION.

23 HOWEVER, I BELIEVE WHAT WE HAD DONE WAS WE HAD FOUND  
24 THAT -- WE CONDUCTED THE SCAN, AND ACTUALLY, I'M NOT SURE ON  
25 THE DATES AS TO WHEN WE RECEIVED THAT CALL FROM THE AGENT IN

1 TEXAS AS WELL. IT WAS SOMEWHERE IN THIS, YOU KNOW, THIS TIME  
2 PERIOD WHEN THE SCAN WAS FINALLY UNDERWAY. IT TOOK A FEW  
3 MONTHS TO GET STARTED.

4 SO WE HAD AN INITIAL SET OF PHILIPPINE SELLERS AND WE  
5 HADN'T, I BELIEVE, AT THIS POINT YET STARTED TO WHAT WE CALL  
6 SPIDER OUT, TO LOOK AT CONNECTIONS VIA PHONE NUMBERS OR E-MAIL  
7 ADDRESSES OR SORT OF A NETWORK, A SOCIAL GRAPH OF BUYERS AND  
8 SELLERS.

9 SO WE HAD AN INITIAL SET OF SELLERS, AND ALREADY IN THAT  
10 INITIAL SET WE WERE ABLE TO DETERMINE THAT PEOPLE WERE --  
11 APPEARED TO BE DISCUSSING IN-PERSON MEETINGS IN THE PHILIPPINES  
12 AND IN-PERSON CHILD ABUSE.

13 Q. SO NOW HAVING RECALLED THAT, IS IT ACCURATE TO SAY THAT  
14 ALL OF THAT HAD HAPPENED IN THE ONE DAY AS INDICATED IN THE  
15 E-MAIL? OR HAD THERE BEEN INVESTIGATION DONE AS TO THESE  
16 TARGETS PRIOR TO JULY 22ND, 2015?

17 A. YOU KNOW, I'M NOT CERTAIN. I DON'T RECALL THE DATE THAT  
18 THE INVESTIGATION BEGAN. I LIKELY WOULDN'T HAVE SAID YESTERDAY  
19 UNLESS THAT WAS ACCURATE, BUT I DON'T HAVE THE EXACT SORT OF  
20 INITIATION DATE OF THAT INVESTIGATION.

21 Q. OKAY. AND SO FROM JULY, WHEN WAS THE -- FROM JULY ON,  
22 WHEN WAS THE FIRST SET OF CYBERTIPS SENT OVER AS A RESULT OF  
23 THESE EFFORTS?

24 A. SO OUR PROCESS, I THINK AS I DESCRIBED A BIT LAST TIME,  
25 WAS THAT WE ATTEMPT TO SORT OF SPIDER OUT -- AGAIN IN QUOTES --

1 OF MAKING CONNECTIONS BETWEEN DIFFERENT ACCOUNTS, IDENTIFYING  
2 THE SOCIAL GRAPH OF BUYERS AND SELLERS.

3 ONCE WE'VE IDENTIFIED WHAT WE BELIEVE TO BE SORT OF THE  
4 UNIVERSE OF ACCOUNTS THAT WOULD BE IN A PARTICULAR REFERRAL, AT  
5 THAT TIME, AS WE'VE GONE ON, WE'VE NOTED WE BELIEVE THERE'S  
6 CHILD PORNOGRAPHY IN THIS ACCOUNT, WE BELIEVE THIS PERSON MIGHT  
7 BE TRAVELING FOR CHILD ABUSE.

8 AND THEN WHEN WE'VE IDENTIFIED ALL THE ACCOUNTS, WE'LL GO  
9 BACK AND FILE CYBERTIPS. ONCE CYBERTIPS ARE FILED, THEN WE CAN  
10 BEGIN ASSEMBLING THE FINAL PACKAGE AND GET THAT SUPPLEMENT OUT  
11 TO NCMEC.

12 Q. SO WHEN DID THAT OCCUR?

13 A. I BELIEVE IT WAS PROBABLY AROUND, LIKE, LATE 2015, SO I  
14 BELIEVE NOVEMBER-ISH. BUT I THINK IT TOOK PROBABLY, YOU KNOW,  
15 TWO MONTHS OR SO TO FINISH ALL THE MANUAL REVIEW OF THAT  
16 MATERIAL.

17 Q. OKAY. THE -- SO -- AND I GUESS I WANT TO CLARIFY ONE  
18 THING.

19 THE OVERLAP WITH SOME OF THE BUYERS -- I'LL WITHDRAW THAT.

20 SO AT THIS POINT, JULY 23RD, THE ACCOUNTS THAT YOU'RE  
21 INVESTIGATING HERE, ARE THEY ACTIVE ACCOUNTS?

22 A. THESE WOULD HAVE BEEN ACTIVE ACCOUNTS, YES.

23 Q. OKAY. AND DO YOU KNOW WHEN THE FIRST DEACTIVATIONS  
24 OCCURRED OF THE ACCOUNTS THAT WERE BEING INVESTIGATED AS A  
25 RESULT OF THIS?

1 A. I DON'T KNOW FOR CERTAIN, BUT THEY WOULD LIKELY HAVE  
2 OCCURRED AS WE REPORTED THE CYBERTIPS. IT ALSO MIGHT HAVE  
3 HAPPENED AFTER WE MADE ALL OF THE CYBERTIPS. IT WAS ONE OF  
4 THOSE TWO.

5 BUT GENERALLY WHEN WE -- AS I DESCRIBED IN OUR LAST  
6 SESSION, WE WOULD IDENTIFY AN ACCOUNT THAT HAD POTENTIAL CHILD  
7 PORNOGRAPHY IN IT; WE WOULD CONSULT OUR LEGAL TEAM TO MAKE SURE  
8 THAT THEY AGREED THAT WE SHOULD PULL THAT CONTENT AND REVIEW  
9 IT; WE WOULD PULL A VERY LIMITED SNAPSHOT OF THE ACCOUNT  
10 CONTENTS JUST SO WE CAN GET BASICALLY THE E-MAIL QUESTIONS OR  
11 CHATS IN QUESTION; AND THEN WE WOULD FILE THE CYBERTIP.

12 AFTER THE CYBERTIP WAS FILED, THAT WAS WHEN WE WOULD  
13 DEACTIVATE THE ACCOUNT.

14 Q. OKAY. SO THE JRWOLFEN02 ACCOUNT CAME UP IN THIS  
15 INVESTIGATION AS AN OVERLAPPER; IS THAT CORRECT?

16 A. THAT IS CORRECT.

17 Q. OKAY. AND THE CYBERTIP IN THAT WAS FILED IN NOVEMBER OF  
18 2015?

19 A. YES.

20 Q. OKAY. AND THE ACCOUNT WAS DEACTIVATED IN DECEMBER OF  
21 2015?

22 A. I BELIEVE SO. I'M NOT CERTAIN.

23 Q. SO THEN IT WAS WITHIN YAHOO'S DISCRETION TO NOT SHUT DOWN  
24 THAT ACCOUNT UP UNTIL DECEMBER OF 2015; IS THAT CORRECT?

25 A. YEAH. AS I DESCRIBED EARLIER, WE -- ONCE WE BECAME AWARE

1 OF --

2 Q. I WAS JUST ASKING WHETHER IT WAS WITHIN YAHOO'S DISCRETION  
3 OR NOT AT THAT POINT.

4 A. I THINK ESSENTIALLY EVERYTHING WE DO WITH RESPECT TO THE  
5 ACTIVATIONS IS WITHIN OUR DISCRETION, YES.

6 Q. OKAY. I'M PUTTING UP WHAT IS BATES 2071 OF EXHIBIT RR.

7 AND IN THE MIDDLE OF THE PAGE THERE, DO YOU RECOGNIZE AN  
8 E-MAIL EXCHANGE WITH MEMBERS OF THE FBI?

9 A. I DO, YES.

10 Q. OKAY. AND YOU'RE ANSWERING -- IS IT FAIR TO SAY YOU'RE  
11 ANSWERING A QUESTION ABOUT A NOTIFICATION, A USER NOTIFICATION  
12 ISSUE THAT CAME UP DURING THE SERVICE OF PROCESS?

13 A. YEAH. AS I DESCRIBED UNDER DIRECT WITH THIS E-MAIL, THE  
14 AGENT HAD SENT IN A SERIES OF WARRANTS AND RECEIVED AN  
15 AUTOMATED RESPONSE REGARDING USER NOTICE AND HAD INQUIRED WHY  
16 THAT HAD OCCURRED.

17 Q. OKAY. AND --

18 MS. HARRIS: EXCUSE ME. I JUST WANT TO CLARIFY ONE  
19 THING. THIS EXHIBIT 2071 IS DEFENSE EXHIBIT SS.

20 MR. ARCHER: OH, APOLOGIES. THANK YOU.

21 MS. HARRIS: SURE.

22 BY MR. ARCHER:

23 Q. AND SO IN THE LAST PARAGRAPH OF YOUR E-MAIL RESPONSE, YOU  
24 ARE, IN FACT, SUGGESTING THE BEST PRACTICE FOR THEM GOING  
25 FORWARD TO AVOID TRIGGERING A USER NOTIFICATION; CORRECT?

1 A. SO WHEN WE CAN, WE ALWAYS ENCOURAGE LEGAL PROCESS, AND  
2 GOING BEFORE A JUDGE AND GETTING A LEGAL ORDER IS WHAT WE, AND  
3 OUR LEGAL TEAM, ENCOURAGE AS OPPOSED TO RELYING ON OUR  
4 DISCRETION AND POLICY.

5 Q. OKAY. BUT YOUR RECOMMENDATION TO THEM IS BEST PRACTICE IN  
6 ORDER TO AVOID TRIGGERING A YAHOO LEGAL NOTIFICATION OR YAHOO  
7 USER NOTIFICATION; CORRECT?

8 A. YES, I ENCOURAGE THEM TO SEEK LEGAL PROCESS, A  
9 NON-DISCLOSURE ORDER.

10 Q. OKAY. AND WHAT'S THE PROBLEM WITH A USER NOTIFICATION  
11 OCCURRING IN THIS TYPE OF SITUATION?

12 A. IT -- I MEAN, I THINK PROBABLY A LOT OF THINGS COULD  
13 HAPPEN. CERTAINLY ONE OF THE CONCERNS THAT LAW ENFORCEMENT HAS  
14 RAISED -- BECAUSE THIS LEGAL NOTICE ISSUE IS VERY CONTENTIOUS.  
15 IT'S NOT JUST OUR COMPANY, IT'S THE INDUSTRY AS A WHOLE HAS  
16 BEEN MOVING TOWARDS MORE TRANSPARENCY AND MORE NOTICE TO USERS  
17 WHO ARE THE TARGET OF GOVERNMENT REQUESTS.

18 LAW ENFORCEMENT HAS STRESSED TO US THAT IN MANY CASES, FOR  
19 EXAMPLE, IN CHILD ABUSE SITUATIONS, THE ABUSERS MIGHT GET  
20 TIPPED OFF THAT THERE IS A LAW ENFORCEMENT INVESTIGATION  
21 UNDERWAY AND, YOU KNOW, TAKE ACTIONS TO EVADE CAPTURE OR  
22 PREVENT THE CHILD FROM BEING RESCUED OR OTHER BAD THINGS FROM  
23 HAPPENING.

24 Q. AND AS AN EXAMPLE OF THAT, FOR INSTANCE, IF YOU WERE TO  
25 DEACTIVATE AN ACCOUNT, IT MIGHT PUT THAT PERSON ON NOTICE AFTER

1 THAT AS WELL; IS THAT CORRECT?

2 A. POTENTIALLY, ALTHOUGH WE DEACTIVATE A LARGE NUMBER OF  
3 ACCOUNTS FOR VARIOUS REASONS AND NOT ALL ARE CONNECTED TO LEGAL  
4 INQUIRIES.

5 Q. THIS IS BATES 1752 OF EXHIBIT RR.

6 MR. ZADIG, DO YOU RECALL THIS INTERACTION?

7 A. I DO, YES.

8 Q. OKAY. FAIR TO DESCRIBE IT AS AN INTRODUCTION BETWEEN  
9 JEFF JONES AND JEFF YESENSKY?

10 A. THAT'S CORRECT.

11 Q. WHAT WAS YOUR INTENT IN INTRODUCING MR. JONES AND  
12 AGENT YESENSKY?

13 A. AS I DISCUSSED EARLIER TODAY BEFORE LUNCH, IN THE CONTEXT  
14 OF THIS E-MAIL, I HAD MET JEFF JONES, WHO WAS THE HEAD OF CYBER  
15 INVESTIGATIONS AT WESTERN UNION ONLINE. HE AND I WERE  
16 DISCUSSING WHAT WE LOOK AT ON OUR OWN PLATFORMS, LIKE, YOU  
17 KNOW, ONLINE FRAUD, ACCOUNT HIJACKING, AS WELL AS CHILD  
18 EXPLOITATION.

19 HE HAD MENTIONED TO ME THAT THEY HAD SEEN A SPIKE IN  
20 REMITTANCES OR PAYMENTS RELATED TO WHAT THEY BELIEVED TO BE  
21 CHILD EXPLOITATION IN ONLINE STREAMING COMING OUT OF THE  
22 PHILIPPINES. BECAUSE THAT WAS SOMETHING THAT THEY WERE LOOKING  
23 AT, I SUGGESTED THAT HE MEET THE FBI PERSON WHO'S BEEN THE  
24 POINT OF CONTACT FOR US, AND I BELIEVE JEFF JONES HAD REQUESTED  
25 AN INTRODUCTION.

1 Q. OKAY. AND YOU MENTIONED DOWN HERE THE COMMON GOAL. I  
2 BELIEVE YOU TESTIFIED PREVIOUSLY THAT THE COMMON GOAL WAS  
3 TRYING TO RID YOUR PLATFORM OF CHILD EXPLOITATION.

4 A. I THINK I MEANT NOT OUR, NOT MY PLATFORM, LIKE YAHOO.

5 BUT I THINK JEFF JONES AND I HAVE A COMMON GOAL, AS DO  
6 OTHERS OF MY PEERS IN THE INDUSTRY, OF MAKING SURE THAT ONLINE  
7 PLATFORMS IN GENERAL ARE NOT USED FOR SEX TRAFFICKING AND CHILD  
8 ABUSE.

9 Q. BUT IT APPEARS, FROM YOUR E-MAIL THOUGH, THAT THE  
10 CONVERSATION WAS WITH AGENT YESENSKY AND YOU ABOUT YOUR COMMON  
11 GOAL. ISN'T THAT WHAT IT APPEARS TO BE FROM THIS E-MAIL?

12 A. I ADDRESS IT TO JEFFS, PLURAL, SO I SUPPOSE IT'S BOTH OF  
13 THEM.

14 Q. OKAY. BUT AGENT YESENSKY'S COMMON GOAL IS NOT CLEARING  
15 THE YAHOO PLATFORM OF --

16 MS. HARRIS: OBJECTION. THIS CALLS FOR SPECULATION  
17 AND IT'S ARGUMENTATIVE.

18 THE COURT: SUSTAINED.

19 MR. ARCHER: OKAY.

20 Q. YOU'RE NOT AWARE OF THE FBI BEING RESPONSIBLE FOR HELPING  
21 MAINTAIN -- HELPING CLEAR YAHOO'S PLATFORM OF CHILD  
22 EXPLOITATION; CORRECT?

23 A. I'M NOT.

24 Q. OKAY. THIS IS BATES 1684 OF DEFENSE RR.

25 MR. ZADIG, DO YOU RECOGNIZE THIS E-MAIL?



1 A. I DO, YES.

2 Q. OKAY. AND THIS IS A -- THIS IS AN INTRODUCTORY E-MAIL.  
3 IS IT ACCURATE TO SAY IT'S YOU INTRODUCING BILL YUREK FROM --  
4 AND WHAT IS THE DCIS?

5 A. THAT IS THE DEFENSE CRIMINAL INVESTIGATIVE SERVICE, AND  
6 THEY ARE AKIN TO THE OIG FOR THE DOD, DEPARTMENT OF DEFENSE.

7 Q. OKAY. SO AT THIS POINT WHEN YOU'RE SENDING THIS E-MAIL,  
8 BILL YUREK IS AN ACTIVE LAW ENFORCEMENT OFFICER; CORRECT?

9 A. THAT'S CORRECT.

10 Q. OKAY. AND IS IT SAFE TO SAY FROM THIS E-MAIL THAT WE --  
11 THAT HE IS ENGAGED IN INVESTIGATING SIMILAR CONDUCT TO WHAT  
12 AGENT YESENSKY IS INVESTIGATING?

13 A. NO. I MEAN, SO HE APPROACHED ME AND HAD INDICATED THAT HE  
14 HAD MOVED INTO THIS NEW ROLE OF MANAGING THE DCIS CYBER  
15 INVESTIGATIONS PROGRAM, AND HE HAD WANTED -- HAD BEEN  
16 INTERESTED IN GETTING DCIS INTO WORK INVOLVING HUMAN  
17 TRAFFICKING INVOLVING DOD SERVICE MEMBERS.

18 Q. AND YOU HAD PREVIOUSLY IDENTIFIED IN YOUR INVESTIGATION  
19 DOD SERVICE MEMBERS FROM -- WHO YOU SUSPECTED TO BE ENGAGING IN  
20 CHILD EXPLOITATION; CORRECT?

21 A. SPECIFICALLY THOSE WHO WERE BUYERS IN THE PHILIPPINES  
22 WEBCAM CASE, YES.

23 Q. OKAY. AND SO YOU WERE HERE ASKING WHETHER AGENT YESENSKY  
24 CAN PROVIDE THOSE ACCOUNTS TO AGENT YUREK?

25 A. YES. AS I WAS SAYING, AGENT YUREK HAD ASKED -- HAD

1 APPROACHED ME AND WAS TALKING ABOUT GENERAL CYBER CRIMES  
2 INVESTIGATIONS BECAUSE HE WAS IN THIS NEW ROLE. HE HAD  
3 MENTIONED HUMAN TRAFFICKING AND HIS DESIRE TO START WORKING  
4 THOSE INVESTIGATIONS.

5 I HAD RECALLED, DURING THAT CONVERSATION, THAT WE HAD  
6 IDENTIFIED A NUMBER OF SERVICE MEMBERS, OR CONTRACTORS OR OTHER  
7 DOD AFFILIATES, WHO WERE IDENTIFIED IN OUR INVESTIGATION.

8 BECAUSE WE COULDN'T PROVIDE AGENT YUREK WITH THAT  
9 INFORMATION, I SUGGESTED HE REACH OUT TO THE FBI POINT OF  
10 CONTACT AND MADE THE INTRODUCTION AT HIS REQUEST.

11 Q. OKAY. SO YOU WERE -- YOU WERE HOPING THAT THERE COULD BE  
12 A LAW ENFORCEMENT TO LAW ENFORCEMENT EXCHANGE OF THAT  
13 INFORMATION BETWEEN AGENT YESENSKY AND AGENT YUREK?

14 A. I MEAN, AGENT YUREK ASKED IF I COULD PUT HIM IN TOUCH  
15 BASED ON DCIS WANTING TO MOVE INTO THIS TYPE OF WORK, AND IT  
16 SEEMED A NATURAL CONNECTION TO MAKE.

17 Q. SO I GUESS I HAVE TO SAY, WAS THAT YOUR HOPE, THAT THERE  
18 WOULD BE A LAW ENFORCEMENT TO LAW ENFORCEMENT EXCHANGE?

19 A. I MEAN, I SUPPOSE SO, YES.

20 Q. AND AGENT YUREK IS NOT INVOLVED IN ANY WAY IN HELPING TO  
21 CLEAR YAHOO'S PLATFORM OF CHILD EXPLOITATION MATERIAL; RIGHT?

22 A. THAT'S CORRECT.

23 Q. THIS IS BATES 1614 OF EXHIBIT RR, AND IF I COULD JUST  
24 DIRECT YOU TO THE BOTTOM E-MAIL THERE.

25 DO YOU RECALL THAT E-MAIL EXCHANGE WITH AGENT YESENSKY?

1 A. I DO, YES.

2 Q. OKAY. AND SO IS IT FAIR TO DESCRIBE THAT AS FOLLOW-UP  
3 REGARDING A PREVIOUSLY DISCUSSED JOINT PRESENTATION ON THE  
4 OPERATION SWIFT TRAVELER INVESTIGATION?

5 A. SORT OF. SO WE HAD -- SO JEFF YESENSKY HAD ACTUALLY ASKED  
6 IF I WOULD BE INTERESTED IN GOING TO DALLAS AND PRESENTING WITH  
7 HIM AND CEOS -- WHICH IS THE DOJ'S CHILD EXPLOITATION AND  
8 OBSCENITIES SECTION -- ABOUT THE ONLINE PHILIPPINE WEBCAM  
9 INVESTIGATIONS. I ACTUALLY DIDN'T END UP DOING THIS.

10 AND WE HAD DISCUSSED INTERNALLY WITHIN OUR LEGAL  
11 DEPARTMENT AND DETERMINED THAT IF WE WERE TO DO ANY SORT OF,  
12 SORT OF CO-PRESENTATION, WE WOULD NEED TO MAKE SURE WE HAD  
13 CLEAR, LIKE, LINES BETWEEN WHERE THE GOVERNMENT PART ENDS AND  
14 WHERE THE INDUSTRY PART BEGINS.

15 Q. SO -- OKAY. SO AGENT YESENSKY INVITED YOU TO POTENTIALLY  
16 GIVE THAT PRESENTATION.

17 THERE WAS ALSO A PRESENTATION, A JOINT PRESENTATION TO THE  
18 PHILIPPINE NATIONAL POLICE?

19 A. NO, NOT EXACTLY. THE PHILIPPINES PRESENTATION WAS  
20 ORCHESTRATED BY ICMEC, THE INTERNATIONAL CENTER FOR MISSING AND  
21 EXPLOITED CHILDREN, AND THERE WERE A NUMBER OF NGO'S AND OTHER  
22 INDUSTRY PARTICIPANTS AT THIS CONFERENCE, EACH GIVING THEIR OWN  
23 PRESENTATIONS.

24 SO WE DIDN'T HAVE A JOINT PRESENTATION BETWEEN YAHOO AND  
25 LAW ENFORCEMENT. THERE WAS A YAHOO SECTION, JUST LIKE THERE

1 WAS A FACEBOOK SECTION AND A XOOM SECTION.

2 Q. OKAY. SO FOR SOME REASON I WAS UNDER THE IMPRESSION THAT  
3 THERE WAS -- OUTSIDE OF THE CONFERENCE, THERE WAS ALSO A  
4 PRESENTATION DIRECTLY TO THE PHILIPPINE NATIONAL POLICE, OR  
5 DISCUSSION THAT BOTH YOU AND AGENT YESENSKY ENGAGED IN WHILE  
6 YOU WERE OVER THERE FOR THE CONFERENCE.

7 A. SO I ACTUALLY WENT AND MET WITH THE PHILIPPINE NATIONAL  
8 POLICE. I DON'T BELIEVE AGENT YESENSKY WAS THERE. I BELIEVE  
9 JEFF WU, WHO IS THE TRUST AND SAFETY REPRESENTATIVE FOR THE  
10 APAC REGION FOR FACEBOOK WAS THERE, BUT I DON'T RECALL  
11 JEFF YESENSKY BEING IN THE MEETINGS WITH THE PHILIPPINE  
12 NATIONAL POLICE.

13 Q. OKAY. OKAY. I'M PUTTING UP NOW BATES 1674 OF EXHIBIT RR.  
14 DO YOU RECOGNIZE THE TOP OF THIS E-MAIL AS A DRAFT BIO FOR  
15 THE ICMEC PRESENTATION THAT WE JUST DISCUSSED?

16 A. I DO, YES.

17 Q. SO I HAVE ONE QUESTION ABOUT IT. YOU CAN SEE TOWARD THE  
18 BOTTOM IT SAYS, "HIS CASES RESULTED IN THE ARREST AND  
19 PROSECUTION OF SUBJECTS IN ESTONIA, NIGERIA, CHINA, AUSTRALIA,  
20 SOUTH AFRICA, AND DOZENS OF INDIVIDUALS IN THE U.S."

21 THAT INCLUDES ARRESTS THAT WERE BOTH A RESULT OF YOUR  
22 DIRECT LAW ENFORCEMENT CAREER, AS WELL AS REFERRALS SINCE  
23 YOU'VE BEEN IN THE PRIVATE SECTOR; IS THAT CORRECT?

24 A. YES. BOTH OF THAT WAS MY DIRECT LAW ENFORCEMENT, BUT MOST  
25 LIKELY SOME OF THE INDIVIDUALS IN THE U.S. WERE AS MY PRIVATE

1 SECTOR AS WELL.

2 Q. I'M PUTTING UP NOW A COPY OF BATES 1738 OF EXHIBIT RR. I  
3 APOLOGIZE. THERE ARE A COUPLE OF MY PEN MARKS ON THERE.

4 BUT YOU RECOGNIZE THIS AS A COMMUNICATION WITH  
5 AGENT YESENSKY REGARDING, I GUESS WE SHOULD TERM IT A  
6 "TRAVELER"?

7 A. I DO RECALL THAT, YES.

8 Q. OKAY. AND SO YOU WERE SUGGESTING TO AGENT YESENSKY THAT  
9 HE PRIORITIZE THE PERSON LISTED IN THAT PARTICULAR CYBERTIP?

10 A. THAT WAS NOT EXACTLY MY INTENT. AS I DESCRIBED EARLIER IN  
11 RELATION TO THIS E-MAIL, YOU KNOW, OUR PROCESS WAS TO FILE A  
12 CYBERTIP; ONCE THE CYBERTIPS HAD BEEN FILED, THEN FILE OUR  
13 SUPPLEMENT AND THEN HAVE AN IN-PERSON MEETING.

14 THIS FELL IN THAT MIDDLE GROUND WHERE WE HAD FILED THE  
15 CYBERTIP, SO NCMEC WAS AWARE OF THE CYBERTIP AND WHAT WAS  
16 CONTAINED WITHIN IT, WHICH I BELIEVE WERE CHATS DESCRIBING  
17 TRAVEL.

18 BECAUSE WE HAD NOT YET SET UP OR HAD THAT MEETING IN  
19 FEBRUARY, AND IN ESSENCE CHILD ABUSE WOULD OCCUR IN THAT  
20 INTERMEDIATE TIME, I WANTED TO ENSURE THAT THE FBI WAS AWARE OF  
21 THIS UPCOMING TRAVEL PURSUANT TO A CYBERTIP.

22 Q. OKAY. SO THAT THEY WERE AWARE OF IT AND THAT THEY  
23 PRIORITIZED IT BECAUSE OF WHAT YOU BELIEVED TO BE IMMINENT  
24 HARM; CORRECT?

25 A. IT'S ONE OF THOSE THINGS WHERE I DIDN'T WANT THE -- IT TO

1 SORT OF SLIP BETWEEN THE CRACKS BETWEEN WHEN WE -- WHEN I FILED  
2 THE CYBERTIP AND WHEN WE HAD THE MEETING.

3 Q. OKAY. THIS IS BATES 1737 FROM EXHIBIT RR.

4 DO YOU RECOGNIZE AGAIN YOU DIRECTING AGENT YESENSKY TO A  
5 DIFFERENT CYBERTIP?

6 A. I DO, YES.

7 Q. OKAY. AND WAS IT YOUR HOPE IN SENDING THAT THAT LAW  
8 ENFORCEMENT WOULD FOCUS ON THAT PARTICULAR INDIVIDUAL?

9 A. THIS IS A VERY SIMILAR SITUATION TO WHAT WE JUST HAD  
10 TALKED ABOUT WHERE -- LOOKING AT THE DATE, THIS IS PRIOR TO OUR  
11 MEETING IN JANUARY.

12 I ACTUALLY REMEMBER THIS INDIVIDUAL CASE. THIS WAS AN  
13 INDIVIDUAL WHO WAS PROBABLY THE MOST CONCERNING PERSON WE HAD  
14 SEEN IN OUR INVESTIGATIONS. HE WAS -- HE WAS A GERMAN BANKER  
15 RESIDING IN SINGAPORE FOR DEUTSCHE BANK. BUT THEN HE, ON THE  
16 SIDE, OPERATED A SEX TOURISM BUSINESS, AND ONE OF THE SERVICES  
17 THAT THIS BUSINESS OFFERED WAS WHAT'S CALLED SNUFF, OR  
18 ESSENTIALLY A MURDER, FOR SEXUAL GRATIFICATION, OF CHILDREN.

19 SO WE WERE EXTREMELY CONCERNED ABOUT THE SNUFF  
20 CONVERSATIONS AND WANTED TO MAKE SURE THAT THE FBI HAD A CHANCE  
21 TO LOOK AT THAT AHEAD OF OUR MEETING. AGAIN, UNDER THE CONTEXT  
22 OF A CYBERTIP.

23 Q. OKAY. THIS IS BATES 1645 FROM EXHIBIT RR.

24 AND SO, AGAIN, DO YOU RECOGNIZE THIS AS AN E-MAIL FROM YOU  
25 AND JEFF ZINGLER IDENTIFYING SOMEONE FOR THE FBI TO PRIORITIZE

1 PRIOR TO YOUR MEETING?

2 A. NOT QUITE. AS I DESCRIBED EARLIER TODAY, THIS E-MAIL WAS  
3 NOT CONNECTED TO THE YAHOO PHILIPPINE WEBCAM INVESTIGATION.

4 THIS IS ONE OF OUR INDIVIDUAL CYBERTIP AND SUPPLEMENTS.  
5 THIS INDIVIDUAL, AS I DESCRIBED, APPEARED TO WORK AS A BUDDHIST  
6 MONK OR A MISSIONARY IN THE PHILIPPINES, OPERATED AN ORPHANAGE,  
7 AND APPEARED TO BE USING HIS POSITION TO ABUSE CHILDREN.

8 WE -- EVEN THOUGH THIS WAS NOT CONNECTED TO THE PHILIPPINE  
9 WEBCAM INVESTIGATION, I HAD KNOWN FROM PREVIOUS CONVERSATIONS  
10 WITH AGENT YESENSKY THAT HE WAS AN EXPERT IN THAILAND, AS WELL  
11 AS THE PHILIPPINES, AND SEX TRAFFICKING INVESTIGATIONS. AND SO  
12 I WANTED TO ENSURE THAT HE COULD HELP PRIORITIZE AND GET THIS  
13 CYBERTIP TO THE RIGHT PLACE IT NEEDED TO BE. OTHERWISE IT  
14 WOULD JUST KIND OF GO TO THAILAND AND VANISH.

15 Q. OKAY. SO THIS IS BATES 1648 OF EXHIBIT RR.

16 DO YOU RECOGNIZE THAT E-MAIL CONVERSATION?

17 A. I DO, YES.

18 Q. OKAY. AND WHAT WAS YOUR INTENT IN SENDING THIS E-MAIL?

19 A. THIS WAS AN INTRODUCTION TO -- ACTUALLY, NO.

20 SO I THINK -- YEAH. I THINK I HAD MET THEM INDIVIDUALLY  
21 ON A PRIOR TRIP IN D.C. ACTUALLY, THIS WAS THE TRIP THAT WE  
22 HAD REFERRED THE THIRD INVESTIGATION TO NCMEC.

23 WHILE I WAS THERE, I ALSO HAD MET THIS DIRECTOR OF  
24 THREAT -- OF CYBER INVESTIGATIONS FOR THE IJM, WHICH IS THE  
25 INTERNATIONAL JUSTICE MISSION, IT'S THE NGO THAT WORKS IN THE

1 PHILIPPINES ON SEX TRAFFICKING. THIS INDIVIDUAL IS ACTUALLY A  
2 PRIOR CO-WORKER OF MINE FROM NASA, MELANIE.

3 AND AFTER HAVING THE REFERRAL WHERE WE HIGHLIGHTED THIS  
4 INDIVIDUAL THAT'S IN THE CYBERTIP THAT IS BLACKED OUT -- THIS  
5 WAS AN INDIVIDUAL THAT WAS AN AMERICAN, HE LIVED IN THE  
6 PHILIPPINES AND HE HAD A HOUSE WHERE HE FORCED WOMEN AND  
7 CHILDREN TO GO ON WEBCAM IN EXCHANGE FOR MONEY. HE WAS  
8 BASICALLY LIKE OPERATING AS KIND OF LIKE A CYBER PIMP.

9 AND GIVEN THE IJM'S SPECIALTY, AND SPECIFICALLY AFFECTING  
10 THE RESCUE OF TRAFFICKED CHILDREN AND THEN THE REHABILITATION  
11 OF THOSE CHILDREN AFTERWARDS, I WANTED -- I SUGGESTED THAT IJM  
12 MIGHT BE IN A POSITION TO HELP THE FBI.

13 Q. OKAY. SO THIS IS BATES 1766 OF EXHIBIT RR.

14 AND IF I COULD JUST DIRECT YOU TO THE BOTTOM THERE, SO  
15 THERE'S AN INDICATION OF, I GUESS IT'S A -- THIS IS AN E-MAIL  
16 FROM AGENT YESENSKY IDENTIFYING THE ARRESTS OF PEOPLE ARRESTED  
17 IN THE PHILIPPINES? IS THAT WHAT'S IN THAT LINK?

18 A. I -- BASED ON THE URL, I BELIEVE SO, YES.

19 Q. OKAY. AND YOU ASK HIM FOR THE YAHOO I.D.S OF THE SELLERS;  
20 IS THAT CORRECT?

21 A. THAT'S CORRECT.

22 Q. OKAY. YOU INDICATE TOO, THOUGH, THAT YOU WANT TO MAKE  
23 SURE THAT YOU DON'T STEP ON ANYTHING. IS THAT BECAUSE YOU'RE  
24 CONCERNED ABOUT DOING SOMETHING THAT MIGHT JEOPARDIZE THEIR  
25 INVESTIGATION?



1 A. SO ONE THING THAT I KNOW, BASED ON BOTH THE TRIP -- WHEN  
2 IS THE DATE OF THIS?

3 I HAD KNOWN FROM MY CONVERSATIONS WITH THE FBI, WITH  
4 HOMELAND SECURITY, WITH OTHER INDUSTRY PARTNERS THAT THE  
5 PHILIPPINE NATIONAL POLICE, AFTER AN ARREST LIKE THIS, OFTEN  
6 ASSUMES THE IDENTITY OF ONE OF THE SELLERS IN AN ATTEMPT TO  
7 IDENTIFY ADDITIONAL CHILD VICTIMS OR OTHER SELLERS.

8 I WANTED TO ENSURE, IF WE KNEW WHAT THE YAHOO I.D.S WERE,  
9 THAT WE WOULDN'T INADVERTENTLY EITHER DEACTIVATE THEM, OR THAT  
10 WE WOULDN'T INCLUDE THEM IN ANOTHER REFERRAL AND KIND OF  
11 INADVERTENTLY, YOU KNOW, BE SORT OF ACTING AS THEIR AGENT OR  
12 SOMETHING. SO WE WANTED TO MAKE SURE WE STAYED FAR AWAY FROM  
13 THE ACCOUNTS IN QUESTION.

14 Q. OKAY. SO YOUR UNDERSTANDING IS THAT THE PHILIPPINE  
15 NATIONAL POLICE, IN THIS CASE, MIGHT BE USING THOSE ACCOUNTS TO  
16 CONTINUE TO INTERACT WITH PEOPLE WHO ARE ATTEMPTING TO PURCHASE  
17 CHILD EXPLOITATION MATERIAL IN AN EFFORT TO PROSECUTE THEM,  
18 EFFECTIVELY; IS THAT CORRECT?

19 A. WELL, THAT, AND TO AFFECT THE RESCUE OF CHILDREN AS I HAD  
20 MENTIONED AS -- IN MY RESPONSE TO THAT E-MAIL ABOUT THE CHILD  
21 RESCUES.

22 Q. RIGHT. OKAY. SO THIS IS BATES 1692 OF EXHIBIT RR.

23 YOU RECOGNIZE THAT AS AN E-MAIL EXCHANGE BETWEEN YOU AND  
24 JEFF YESENSKY?

25 A. I DO, YES.

1 Q. OKAY. AND SO IT APPEARS HERE THAT YOU'RE REACTING TO  
2 NOTIFICATION FROM A FACEBOOK INVESTIGATION TEAM THAT A YAHOO  
3 ACCOUNT IS INVOLVED IN STREAMING. IS THAT ACCURATE?

4 A. I THINK SO.

5 Q. OKAY. AND SO IT ALSO APPEARS THAT AS A RESULT OF THAT,  
6 YOU WENT AND REVIEWED THAT ACCOUNT AND THAT ACCOUNT HAD CHATS  
7 WITH ANOTHER PREVIOUSLY IDENTIFIED TARGET?

8 A. WITHOUT SEEING THE UNREDACTED I.D.S HERE, BOTH OF THESE  
9 MAY HAVE ACTUALLY BEEN IN OUR PRIOR REFERRALS.

10 Q. OKAY.

11 A. BUT THAT'S CORRECT, YES.

12 Q. OKAY. SO THE -- THE ONE THAT'S BEEN STREAMING ON FACEBOOK  
13 MAY HAVE BEEN IN A PRIOR ONE, BUT WE'RE NOT SURE BECAUSE IT'S  
14 REDACTED? IS THAT ACCURATE?

15 A. YEAH. IT'S COMMON THAT OTHER COMPANIES MIGHT REFER --  
16 JUST LIKE XOOM DID FOR US -- REFER ACCOUNTS THAT ARE ENGAGED IN  
17 VIOLATION OF THEIR OWN TOS TO US.

18 SO, YEAH, EXACTLY.

19 Q. OKAY. SO YOU SAY AGAIN THAT YOU DON'T WANT TO DISRUPT  
20 ANYTHING ONGOING. IS THAT BECAUSE SHUTTING DOWN AN ACCOUNT  
21 MIGHT JEOPARDIZE A PROSECUTION?

22 A. AS I MENTIONED BEFORE, ESPECIALLY WITH RESPECT TO THE  
23 WEBCAM, THE PHILIPPINE WEBCAM INVESTIGATION, OUR FOCUS WAS ON  
24 CHILD RESCUES, AND I WOULD PERSONALLY, AS A PERSON, FEEL VERY  
25 BAD ABOUT SORT OF INTERRUPTING A RESCUE OPERATION THAT MIGHT

1 HAVE BEEN UNDERWAY.

2 Q. SO YOU DIDN'T HAVE ANY CONCERN ABOUT DISRUPTING A LAW  
3 ENFORCEMENT INVESTIGATION?

4 A. I MEAN, THE LAW ENFORCEMENT INVESTIGATION WOULD LIKELY  
5 HAVE RESULTED IN THE CHILD RESCUE.

6 Q. SO YOU'RE TESTIFYING THAT IT DID NOT CROSS YOUR MIND THAT  
7 IT MIGHT -- THAT YOU MIGHT JEOPARDIZE A PROSECUTION?

8 MS. HARRIS: OBJECTION, YOUR HONOR. ASKED AND  
9 ANSWERED.

10 THE COURT: SUSTAINED.

11 BY MR. ARCHER:

12 Q. OKAY. THIS IS BATES 1628.

13 DO YOU RECALL RECEIVING THIS E-MAIL?

14 THE COURT: YOU KNOW WHAT? ACTUALLY, HIS LAST ANSWER  
15 KIND OF TIES THE TWO. I'M GOING TO OVERRULE THAT OBJECTION.

16 YOU CAN ANSWER THE QUESTION.

17 MR. ARCHER: THANK YOU.

18 Q. SO I'LL REASK IT. WHEN YOU STATED, "I DON'T WANT TO  
19 DISRUPT ANYTHING ONGOING," ARE YOU TESTIFYING THEN THAT THAT  
20 HAD NOTHING TO DO WITH THE POSSIBILITY OF JEOPARDIZING A  
21 PROSECUTION?

22 A. SO YOU PREVIOUSLY ASKED ABOUT LAW ENFORCEMENT  
23 INVESTIGATION, AND AT LEAST IN MY MIND, THE LAW ENFORCEMENT  
24 INVESTIGATION LEADS TO THE CHILD RESCUE.

25 PROSECUTION NOTWITHSTANDING, I THINK WE WOULDN'T WANT TO

1 INTERRUPT THE INVESTIGATION THAT WAS GOING TO RESULT IN A  
2 RESCUE.

3 Q. OKAY. I'M NOT SURE I UNDERSTAND. BUT YOU UNDERSTAND THAT  
4 INVESTIGATIONS LEAD TO BOTH PROSECUTIONS AND CHILD RESCUES;  
5 CORRECT?

6 A. SOMETIMES THEY DO, YES.

7 Q. OKAY. AND SO IS IT YOUR TESTIMONY THEN TODAY THAT IT  
8 NEVER CROSSED YOUR MIND THAT YOU COULD DISRUPT A, AN  
9 INVESTIGATION THAT COULD LEAD TO A PROSECUTION BY DEACTIVATING  
10 AN ACCOUNT?

11 A. AGAIN, I THINK THAT WE WERE NOT FOCUSED ON THE  
12 PROSECUTION. OUR OBJECTIVE AS A COMPANY IN DOING THESE  
13 REFERRALS WAS THE RESCUE OF CHILDREN WHO WERE BEING ABUSED, AND  
14 THEN THE STOPPING OF THE ACTIVITY AND INDIVIDUALS WHO WERE  
15 USING OUR PLATFORM TO DO THIS BAD THING.

16 Q. SO IN THIS -- SO IN THIS CASE, YOU HAD THE DISCRETION TO  
17 DETERMINE THAT IT WAS BETTER TO LEAVE THE ACCOUNT ACTIVE AND  
18 HAVE THE ACTIVITY CONTINUE ON YOUR PLATFORM IN THE HOPES THAT  
19 IT WOULD LEAD TO A CHILD RESCUE?

20 MS. HARRIS: OBJECTION. THIS IS ARGUMENTATIVE, YOUR  
21 HONOR, AND IT'S BEEN ANSWERED ALREADY.

22 THE COURT: SUSTAINED.

23 HOW MANY MORE DO YOU HAVE, MR. ARCHER?

24 MR. ARCHER: THIS IS MY LAST ONE.

25 THE COURT: OKAY.

1 BY MR. ARCHER:

2 Q. SO I'D LIKE TO SHOW YOU A SERIES OF E-MAILS. THIS IS  
3 BATES 1628.

4 DO YOU RECALL THIS INTERCHANGE WITH AN OFFICER FROM THE  
5 AUSTRALIAN FEDERAL POLICE?

6 A. I DO, YES.

7 Q. OKAY. AND SO -- LET'S SEE. I'M GOING TO MOVE ON TO 1703,  
8 AND I GUESS JUST TO SUMMARIZE IT, THIS IS A -- THIS IS SOMEONE  
9 THAT, TO YOUR UNDERSTANDING, WAS REFERRED TO YOU BY  
10 AGENT YESENSKY?

11 A. YES, I BELIEVE SO.

12 Q. OKAY. AND SO HE WAS -- HE INDICATED THAT, THAT YAHOO  
13 AUSTRALIA DID PROCESS THEIR LEGAL REQUESTS, BUT HE WAS  
14 INTERESTED IN MORE OF A WORKING RELATIONSHIP THAN THAT.

15 IS THAT YOUR UNDERSTANDING OF WHAT HE WAS REQUESTING?

16 A. THAT WAS HIS REQUEST, YES.

17 Q. OKAY. THIS IS BATES 1703. LET ME FIX THAT A LITTLE BIT.

18 SO IN YOUR EXCHANGE WITH THIS AGENT OF THE AUSTRALIAN  
19 FEDERAL POLICE, HE ASKED -- WELL, FIRST, I SUPPOSE I SHOULD  
20 SAY, HE HAD A NUMBER OF QUESTIONS FOR YOU; IS THAT CORRECT?

21 A. THESE ARE -- WELL, THIS IS MY RESPONSE TO HIM, YES.

22 SO I DON'T SEE HIS QUESTIONS HERE. BUT I THINK I WAS  
23 ANSWERING SOME SORT OF QUESTIONS AS I INDICATED IN NUMBER 3.

24 Q. OKAY. I'M PERHAPS TAKING IT SLIGHTLY OUT OF ORDER. LET'S  
25 SEE.

1 SO YOU PROVIDED HIM -- IN RESPONSE TO HIS QUESTIONS,  
2 THOUGH -- HE IDENTIFIED PARTICULAR CASES THAT HAD BEEN -- THAT  
3 YOU HAD PREVIOUSLY IDENTIFIED AS PART OF THE SWIFT TRAVELER  
4 INVESTIGATION; IS THAT CORRECT?

5 A. CAN YOU SAY THAT AGAIN, PLEASE?

6 Q. SURE. SO PART OF YOUR DISCUSSION WITH HIM WAS ABOUT CASES  
7 THAT YOU HAD ALREADY IDENTIFIED AND REFERRED OVER TO THE FBI  
8 THROUGH NCMEC; IS THAT CORRECT?

9 A. YES. SO WHAT HAD HAPPENED WAS HIS INITIAL E-MAIL WE SAW  
10 ON THE SCREEN PREVIOUSLY, HE HAD ESSENTIALLY ASKED FOR A BETTER  
11 WORKING RELATIONSHIP.

12 MY RESPONSE TO THAT WAS TO KIND OF GENTLY REBUFF HIM AND  
13 SAY -- AND THERE'S A THREAD SOMEWHERE IN THIS CHAIN WHERE I  
14 SAID, "WHAT WE WOULD REALLY LIKE WOULD BE FEEDBACK FROM YOU  
15 BECAUSE THIS IS WHAT REALLY HELPS OUR FRONT-LINE REVIEWERS AT  
16 OUR COMPANY."

17 SO I WAS ABLE TO REDIRECT HIM FROM A WORKING  
18 RELATIONSHIP -- WHICH WE DON'T CLAIM TO HAVE A, YOU KNOW,  
19 WORKING RELATIONSHIP WITH LAW ENFORCEMENT, THAT'S NOT HOW WE  
20 WOULD CHARACTERIZE OUR INTERACTIONS WITH THE GOVERNMENT, OR ANY  
21 GOVERNMENT -- BUT I WAS ABLE TO DIRECT HIS SORT OF FOCUS TOWARD  
22 FEEDBACK, WHICH WAS SOMETHING THAT WE HAD PARTICULARLY WANTED  
23 FOR OUR OWN BUSINESS PURPOSES.

24 MR. ARCHER: YOUR HONOR, MAY I HAVE A QUICK MOMENT?

25 THERE'S -- I THINK I'M MISSING A COUPLE PAGES OF THIS DOCUMENT.

1 THE COURT: OKAY. GO AHEAD, PLEASE.

2 (PAUSE IN PROCEEDINGS.)

3 MS. HARRIS: WHAT'S THE BATES?

4 (PAUSE IN PROCEEDINGS.)

5 MR. ARCHER: I APOLOGIZE, YOUR HONOR. JUST A MOMENT.

6 THE COURT: DO YOU HAVE THE PAGE, MS. HARRIS, THAT

7 MR. ARCHER IS LOOKING FOR? MAYBE THAT COULD EXPEDITE IT.

8 MS. HARRIS: I BELIEVE I MIGHT.

9 MS. KEITH: 170 --

10 THE COURT: WE'RE AT 1703. DO YOU WANT BEFORE OR  
11 AFTER THAT NUMBER?

12 MR. ARCHER: SO IT KIND OF SKIPS AROUND,  
13 UNFORTUNATELY, IN THE PRODUCTION.

14 MS. HARRIS: SO THIS IS WHAT I HAVE (INDICATING).

15 MR. ARCHER: BECAUSE THERE'S AROUND --

16 MS. KEITH: I HAVE 1702.

17 MS. HARRIS: THERE'S 1702.

18 THAT'S 12. OR IF YOU NEED THE BIGGER ONE, THIS IS IT  
19 (HANDING).

20 MR. ARCHER: OKAY.

21 (PAUSE IN PROCEEDINGS.)

22 BY MR. ARCHER:

23 Q. OKAY. SO YOU TESTIFIED A MOMENT AGO THAT YOUR INTENTION  
24 IN RESPONDING TO HIM WAS SORT OF TO GIVE HIM A POLITE REBUFF  
25 ABOUT THE POSSIBILITY OF A WORKING RELATIONSHIP; IS THAT

1 CORRECT?

2 A. YEAH. I WANTED TO SORT OF REDIRECT HIM TOWARDS, TOWARDS  
3 PROVIDING FEEDBACK. WE TYPICALLY HADN'T RECEIVED FEEDBACK FROM  
4 AUSTRALIA IN RESPONSE TO OUR CYBERTIPS AND SUPPLEMENTS. SO --

5 Q. OKAY.

6 A. YEAH, THAT WAS THE IDEA.

7 Q. OKAY. SO IF WE COULD LOOK AT 1708 NOW, SO "HELLO RAB,  
8 WE'D BE DEFINITELY INTERESTED IN DEVELOPING A BETTER WORKING  
9 RELATIONSHIP WITH THE AFP, ESPECIALLY WITH RESPECT TO CHILD  
10 ABUSE INVESTIGATIONS AND SPECIFICALLY TO SEX TOURISM CASES."

11 DO YOU RECALL SENDING THAT E-MAIL?

12 A. I DO. AND SPECIFICALLY THE NEXT PARAGRAPH IS EXACTLY MY  
13 POINT THERE.

14 Q. OKAY. SO INSTEAD OF -- SO YOUR RESPONSE THEN TO HIM WAS A  
15 REQUEST FOR INFORMATION FROM HIM ON FEEDBACK ON PRIOR REFERRALS  
16 AND CASES GOING FORWARD? THAT'S WHAT YOU'RE ASKING OF HIM IN  
17 EXCHANGE FOR THIS WORKING RELATIONSHIP; CORRECT?

18 A. NO. I WAS NOT MAKING ANY PROMISES OR IN EXCHANGE  
19 ARRANGEMENT.

20 I WAS SAYING -- HE'S SAYING, "HEY, CAN WE WORK TOGETHER  
21 CLOSELY?" AND I WAS SAYING, "YES. CAN WE GET SOME FEEDBACK?"

22 THERE WAS NO PROMISE THAT I WOULD DO ANYTHING ADDITIONAL  
23 WITH RESPECT TO THAT FEEDBACK.

24 Q. OKAY. SO YOU SAID -- YOU ASKED FOR FEEDBACK, AND YOU  
25 SUGGEST THEN THE FORMAT OF THE FEEDBACK, SAYING IT MIGHT BE AS



1 SIMPLE AS "SUBJECT ARRESTED ON JUNE 1, 2016," AND THEN YOU  
2 INDICATE THAT THIS RELATIONSHIP WOULD BE PRODUCTIVE FOR BOTH  
3 SIDES; CORRECT?

4 A. YES. THAT WAS MY ATTEMPT TO KIND OF DIRECT HIM AWAY FROM  
5 THE -- FROM WHAT I BELIEVED HE WAS SUGGESTING, WHICH WAS SORT  
6 OF MORE OF A, YOU KNOW, HAND-IN-HAND RELATIONSHIP.

7 Q. SO HE'S COMING TO YOU WITH A SUGGESTION OF A RELATIONSHIP  
8 BASED ON COMMUNICATIONS THAT HE RECEIVED FROM AGENT YESENSKY  
9 ABOUT YOUR RELATIONSHIP WITH AGENT YESENSKY; CORRECT?

10 MS. HARRIS: OBJECTION. CALLS FOR SPECULATION.

11 MR. ARCHER: WELL, WE CAN GO TO THE -- BACK TO THE  
12 FIRST E-MAIL IF WE'D LIKE.

13 THE COURT: ALL RIGHT. OVERRULED.

14 BY MR. ARCHER:

15 Q. SO WHEN HE'S SAYING HE SEEMS -- "IT SEEMS THAT YOU HAVE A  
16 REALLY GOOD WORKING RELATIONSHIP WITH THE FBI IN THIS CRIME  
17 TYPE, IT SOUNDS LIKE THAT RELATIONSHIP WAS QUITE VALUABLE TO  
18 THE SUCCESS OF THEIR INVESTIGATIONS."

19 YOUR UNDERSTANDING IS THAT HE'S ASKING FOR THE SAME TYPE  
20 OF RELATIONSHIP WITH HIM THAT AGENT YESENSKY HAS; IS THAT  
21 CORRECT?

22 A. I WOULD NOT WANT TO PUT MYSELF IN HIS MIND.

23 ONE THING THAT WE SEE WITH RESPECT TO FOREIGN LAW  
24 ENFORCEMENT IN GENERAL IS THAT THEY OFTEN DON'T HAVE THE SAME  
25 LEVEL OF DISTANCE FROM PRIVATE SECTOR LIKE WE DO IN THE

1 UNITED STATES. THEY MAY NOT HAVE THE EQUIVALENT OF THE FOURTH  
2 AMENDMENT OR SIMILAR PROTECTIONS. AND SO, YOU KNOW, REQUESTS  
3 FROM FOREIGN LAW ENFORCEMENT LIKE THIS ARE NOT IRREGULAR.

4 I PROBABLY SHOULD HAVE BEEN A LITTLE MORE FORCEFUL IN MY  
5 REBUFFING OF HIM. BUT I DEFINITELY DID TRY TO STEER HIM AWAY  
6 FROM I THINK THE COZY RELATIONSHIP HE WANTED INTO MORE OF ONE  
7 THAT WAS SOLICITING FEEDBACK FOR, FOR DISSEMINATION WITHIN  
8 YAHOO.

9 Q. OKAY. SO WHEN YOU SAY "HAVING THIS RELATIONSHIP WOULD BE  
10 PRODUCTIVE FOR BOTH SIDES," YOU CONSIDER THAT A MANNER OF  
11 REBUFFING A REQUEST FOR A RELATIONSHIP?

12 A. UM --

13 MS. HARRIS: OBJECTION. ARGUMENTATIVE.

14 THE COURT: SUSTAINED. LET'S PUT THAT WHOLE  
15 PARAGRAPH ON THE RECORD. IT STATES, "WOULD YOU BE ABLE TO  
16 PROVIDE FEEDBACK ON OUR PRIOR REFERRALS AND ON CASES GOING  
17 FORWARD? THIS FEEDBACK MIGHT BE AS SIMPLE AS 'SUBJECT ARRESTED  
18 ON JUNE 1, 2016, AND TWO CHILDREN RESCUED' OR 'CASE CLOSED DUE  
19 TO LACK OF EVIDENCE.' HAVING THIS RELATIONSHIP WOULD BE  
20 PRODUCTIVE FOR BOTH SIDES."

21 GO AHEAD, PLEASE. ANSWER THE QUESTION.

22 THE WITNESS: I'M SORRY. WOULD YOU MIND STATING THE  
23 QUESTION AGAIN?

24 BY MR. ARCHER:

25 Q. SURE. I'LL WITHDRAW THE QUESTION. THAT'S FINE.

1           THIS IS 1708. SO YOU IDENTIFY TO OFFICER SEIP THAT THE  
2           FEEDBACK THAT YOU'RE LOOKING FOR IS LEARNING OF ARRESTS,  
3           CHARGES, AND THE LIKE FROM THE CASE REFERRALS; CORRECT?

4           A.    THAT'S WHAT I SAID, YES.

5           Q.    OKAY. DO YOU SEE ANYTHING THERE ABOUT CHILD RESCUE?

6           A.    I BELIEVE IN THE -- IF THIS WERE TO CONTINUE LATER IN THAT  
7           PARAGRAPH, ASSUMING THIS IS WHAT WE WERE LOOKING AT IN THE  
8           PRIOR PAGE, THAT'S --

9                   THE COURT: THE PARAGRAPH THAT I JUST READ WAS 1709,  
10           CORRECT, AND IS THE PARAGRAPH THAT FOLLOWS THIS ONE? IS THAT  
11           RIGHT? CAN SOMEONE PUT UP 1707 AND 1708? I'M CONFUSED.

12                   MR. ARCHER: THIS IS 1708 AND THE TOP OF 1709, YOUR  
13           HONOR.

14                   THE COURT: OKAY. SO THE NEXT PARAGRAPH DISCUSSES  
15           CHILD RESCUE AND CASE CLOSED DUE TO LACK OF EVIDENCE.

16                   MR. ARCHER: OKAY.

17           Q.    SO -- LET'S SEE. THIS IS 1702.

18                   DO YOU RECOGNIZE THESE AS THE QUESTIONS THAT THE AGENT HAD  
19           FOR YOU ABOUT THE PREVIOUS INVESTIGATIONS?

20           A.    I BELIEVE SO, YES.

21           Q.    OKAY. SO IN PARTICULAR, HE'S ASKING ABOUT HOW THEY CAN  
22           AVOID -- AND THIS IS PARAGRAPH 3 -- HOW THEY CAN AVOID USER  
23           NOTIFICATION TO AVOID TIPPING THEIR HAND.

24                   DO YOU SEE THAT?

25           A.    I DO SEE THAT.

1 THE COURT: WHAT'S THE BATES NUMBER ON THIS ONE?

2 MR. ARCHER: 1702, YOUR HONOR.

3 THE COURT: OKAY. THAT'S 1702. ALL RIGHT. THANK  
4 YOU.

5 MR. ARCHER: AND I APOLOGIZE. THEY'RE MOSTLY IN  
6 SEQUENCE. IT'S JUST ONE OF THEM STARTS -- THE ORIGINAL E-MAIL  
7 STARTS AT 1628. THAT'S WHY THEY'RE --

8 THE COURT: 1628. OKAY. THANK YOU.

9 MR. ARCHER: CORRECT.

10 THE COURT: THANK YOU.

11 BY MR. ARCHER:

12 Q. AND SO YOU RECALL ANSWERING AND PROVIDING, IN PARAGRAPH 2,  
13 SPECIFIC DETAILS ABOUT CASES THAT THE AUSTRALIAN FEDERAL POLICE  
14 HAD IDENTIFIED? THAT WOULD BE THE REDACTED PORTION THERE?

15 A. I DON'T ACTUALLY RECALL THIS. CAN WE FLIP BACK TO THE  
16 PRIOR PAGE SO I CAN SEE WHAT HE'S ASKING?

17 Q. SURE.

18 A. I DON'T UNDERSTAND HOW NUMBER 2 PERTAINS TO PORT NUMBERS.

19 Q. AND I'M NOT SURE, EITHER. IT MAY BE -- SO I GUESS I DON'T  
20 KNOW WHAT QUESTION THAT'S IN RESPONSE TO. WE MAY BE MISSING A  
21 QUESTION.

22 BUT DO YOU RECALL PROVIDING FEEDBACK, ON CASES THAT HE  
23 IDENTIFIED, TO HIM?

24 A. MAYBE IT'S ON THE NEXT PAGE, BECAUSE THIS WAS A RESPONSE.

25 Q. OKAY.

1 A. THE CONTEXT WOULD HELP.

2 Q. SORRY. I'LL --

3 A. FEEDBACK.

4 I'M SORRY. I DON'T -- I DON'T ACTUALLY RECALL WHAT THIS  
5 WAS ABOUT.

6 Q. OKAY.

7 A. CERTAINLY THERE'S A LEGAL PROCESS SECTION.

8 Q. THESE ARE HIS QUESTIONS THEN; CORRECT?

9 A. YEAH, I THINK SO.

10 Q. OKAY.

11 THE COURT: WHAT'S THE PORT NUMBER? IS THAT A REPORT  
12 NUMBER? OR DO YOU -- DO YOU KNOW WHAT THAT IS?

13 THE WITNESS: I KNOW WHAT THAT IS. A PORT NUMBER --  
14 SO IF YOU THINK -- SORRY, THIS IS A LITTLE TECHNICAL.

15 WHEN THERE'S A CONNECTION TO A YAHOO SERVER, THAT HAPPENS  
16 WITH AN I.P. ADDRESS, AND IT HAPPENS OVER WHAT'S CALLED TCP/IP,  
17 OR TRANSMISSION CONTROL PROTOCOL/INTERNET PROTOCOL.

18 THERE'S AN I.P. NUMBER, I.P. ADDRESS, WHICH IS THE  
19 DESTINATION COMPUTER, AND THEN THERE'S WHAT'S CALLED A PORT  
20 NUMBER, WHICH IS THE, THE SORT OF SOCKET ON THE DESTINATION  
21 COMPUTER THAT GETS SENT TO THE -- OR THE REQUESTED COMPUTER  
22 THAT GETS SENT TO THE DESTINATION.

23 PORT NUMBERS ARE OFTEN IMPORTANT FOR LAW ENFORCEMENT OR  
24 OTHER INQUIRIES LIKE THAT BECAUSE WHEN, LIKE, A REQUEST IS  
25 COMING FROM A CELLULAR PROVIDER WHERE THERE MIGHT BE 5,000

1 PEOPLE USING ONE I.P. ADDRESS, THE PORT NUMBER IS REQUIRED TO  
2 IDENTIFY THAT SPECIFIC USER BEHIND THAT ONE I.P. ADDRESS.

3 SO PORT NUMBERS ARE ONE THING THAT YAHOO DOES PROVIDE, BUT  
4 MOST OTHER PROVIDERS DO NOT.

5 THE COURT: OKAY. GO AHEAD, PLEASE.

6 MR. ARCHER: OKAY.

7 Q. SO THIS IS BATES 1706.

8 THAT IS A -- DO YOU RECOGNIZE THIS AS A RESPONSE TO AN  
9 E-MAIL FROM AGENT SEIP ABOUT -- I MEAN, ACTUALLY, IF YOU CAN  
10 JUST READ IT AND TELL US WHAT THIS E-MAIL IS AND THEN PERHAPS  
11 WHY YOU SENT IT?

12 A. SURE. THIS SHOULD HAVE BEEN A -- I MEAN --

13 Q. SORRY. I CAN SHOW YOU THE SECOND PAGE, TOO, BECAUSE  
14 THERE'S MORE CONTENT. THAT MIGHT BE HELPFUL.

15 A. SURE.

16 MR. ARCHER: MS. HARRIS, DO YOU MIND IF I DISCONNECT  
17 THE STAPLE?

18 MS. HARRIS: OH, YEAH, GO AHEAD.

19 BY MR. ARCHER:

20 Q. OKAY. SO THIS IS 1706, CONTINUING ON TO 1707.

21 A. OKAY. SO I BELIEVE THIS WAS LIKELY A LIST OF CYBERTIPS  
22 FROM OUR PRIOR SWIFT TRAVELER REFERRALS, SWIFT TRAVELER BEING  
23 THE FBI'S NAME FOR THEIR INVESTIGATION.

24 MY UNDERSTANDING WAS THAT THE FBI HAD PROVIDED THE  
25 AUSTRALIAN FEDERAL POLICE WITH, IF NOT THE ENTIRE INVESTIGATION

1 WE PROVIDED, AT LEAST THE SUBSET PERTAINING TO AUSTRALIAN  
2 USERS.

3 Q. OKAY.

4 A. SO I WAS INQUIRING AS TO WHAT THE AUSTRALIAN POLICE HAD  
5 DONE.

6 Q. SO THIS IS FROM -- IS IT SAFE TO SAY THAT THE REDACTED  
7 PORTION OF THIS IS A LIST THAT YOU HAD OF YAHOO I.D.S THAT WERE  
8 BELIEVED TO BE AUSTRALIAN USERS? IS THAT --

9 A. I DON'T KNOW IF THEY'RE YAHOO I.D.S. THEY'RE CERTAINLY  
10 CYBERTIP NUMBERS. THERE MAY HAVE BEEN YAHOO I.D.S, BUT I DON'T  
11 RECALL.

12 Q. OKAY. SO -- BUT INFORMATION IDENTIFYING TARGETS OF THE  
13 PHILIPPINE WEBCAM INVESTIGATION THAT WERE BELIEVED TO RESIDE IN  
14 AUSTRALIA? IS THAT THE IDEA?

15 A. CORRECT, AND BASED ON MY UNDERSTANDING, THAT THE FBI HAD  
16 ALREADY PROVIDED THIS INFORMATION TO AUSTRALIA AND WAS HOPING  
17 TO FOLLOW UP ON THAT.

18 Q. OKAY. AND SO YOU WERE -- YOU WANTED TO FIND THE STATUS OF  
19 THOSE CASES? IS THAT --

20 A. CONSISTENT WITH HOW WE DESCRIBED OUR REQUEST FOR FEEDBACK,  
21 YES.

22 MR. ARCHER: OKAY.

23 MAY I HAVE A MOMENT, YOUR HONOR?

24 THE COURT: GO AHEAD, PLEASE.

25 (DISCUSSION OFF THE RECORD BETWEEN DEFENSE COUNSEL.)

1 MR. ARCHER: NOTHING FURTHER, YOUR HONOR.

2 THANK YOU.

3 THE COURT: ALL RIGHT. IS THERE ANY REDIRECT?

4 MS. HARRIS: VERY BRIEFLY, YOUR HONOR.

5 THE COURT: ALL RIGHT. GO AHEAD, PLEASE.

6 MR. ARCHER: (HANDING.)

7 MS. HARRIS: THANK YOU.

8 **REDIRECT EXAMINATION**

9 BY MS. HARRIS:

10 Q. MR. ZADIG, I JUST WANTED TO CLARIFY ONE THING THAT YOU HAD  
11 SAID ABOUT THE NCMEC REPORTING THAT YAHOO DOES, OR THAT ECIT  
12 DOES AND THE CONTENT MODERATION TEAMS.

13 SO EARLY IN THE CROSS-EXAMINATION, THERE WAS SOME  
14 DISCUSSION OF THE STANDARDS OR QUALIFYING EVENTS THAT WOULD  
15 TRIGGER -- OR THAT -- FOR WHICH A CYBERTIP CAN BE FILED.

16 CAN YOU EXPLAIN WHAT, WHAT THOSE EVENTS ARE IN TERMS OF  
17 WHAT -- WHAT WOULD TRIGGER A FILING OF A CYBERTIP IN YOUR  
18 UNDERSTANDING?

19 A. SO WE FILE CYBERTIPS -- ESSENTIALLY THERE'S A PART OF THE  
20 U.S. FEDERAL CODE THAT REQUIRES -- THAT DEFINES THE REPORTING  
21 OBLIGATIONS OF ELECTRONIC SERVICE PROVIDERS, AND IT SPELLS OUT  
22 WHAT CONDUCT IS REQUIRED TO BE REPORTED WHEN THE COMPANY  
23 BECOMES AWARE OF IT, CERTAINLY THE POSSESSION AND DISTRIBUTION  
24 OR PRODUCTION OF CHILD PORNOGRAPHY, EXCHANGE OF THAT OVER  
25 ONLINE PLATFORMS.



1 I BELIEVE THERE'S ALSO, MAYBE IN A SEPARATE STATUTE, A  
2 DISCUSSION OF REPORTING OF CHILD -- TRAVEL FOR CHILD ABUSE. I  
3 DON'T KNOW IF THAT'S A MANDATORY REQUIREMENT, BUT CERTAINLY  
4 THE -- WHENEVER THE COMPANY BECOMES AWARE OF CHILD PORNOGRAPHY  
5 AND SO PUTS EYES ON IT, IT HAS TO REPORT IT TO NCMEC.

6 Q. I SEE. SO THE SUPPLEMENTAL REPORTING, IS THAT ALSO  
7 REQUIRED UNDER THE STATUTE?

8 A. IT IS NOT, NO.

9 Q. IS -- WHY DOES ECIT AND YAHOO DO SUPPLEMENTAL REPORTING  
10 BEYOND THAT?

11 A. WE HAVE A DESIRE TO -- WELL, A COUPLE OF REASONS.

12 ONE, WE DON'T WANT THIS CONDUCT HAPPENING ON OUR PLATFORM,  
13 AND THERE ARE MANY CASES WHERE THERE'S IMMINENT HARM TO  
14 CHILDREN, PHYSICAL OR SEXUAL HARM THAT WE FEEL WE HAVE AN  
15 OBLIGATION TO REPORT.

16 THERE'S ALSO A BUSINESS REASON, THAT MAKING THESE REPORTS  
17 RESULTS IN A CLEANER PLATFORM. IT -- LAW ENFORCEMENT ACTION  
18 MIGHT REMOVE THAT INDIVIDUAL FROM OUR PLATFORMS.

19 AND THERE HAVE BEEN MANY CASES WHERE OUR AGGRESSIVE ACTION  
20 WITH RESPECT TO CHILD PORNOGRAPHY HAS RESULTED IN BUSINESS  
21 BENEFITS, LIKE I THINK I DESCRIBED LAST TIME THE TUMBLR APP  
22 REMOVAL WHERE THE FACT THAT WE CONDUCT THIS -- ECIT CONDUCTS  
23 THESE TYPES OF INVESTIGATIONS IS ONE OF THE FACTORS THAT  
24 ACTUALLY ALLOWED APPLE TO LET US RELIST THE TUMBLR APP ON THE  
25 APP STORE.

1 Q. SO IS IT FAIR TO SAY THAT YAHOO DOESN'T HAVE TO REPORT  
2 THINGS LIKE SOMEONE SOLICITING CHILD PORNOGRAPHY AND OFFERING  
3 TO PAY FOR IT, BUT IT CHOOSES TO DO SO?

4 A. THAT'S RIGHT, YES.

5 Q. FOR THE REASONS YOU JUST SPECIFIED?

6 A. CORRECT.

7 Q. AND THOSE REPORTS MAY EXCEED THE STATUTORY MINIMUM  
8 OBLIGATION OF THE COMPANY?

9 A. THEY DO, YES.

10 Q. AND YOU CHOOSE TO DO THAT FOR THE REASONS THAT YOU  
11 SPECIFIED PREVIOUSLY?

12 A. THAT'S CORRECT.

13 Q. AND, AGAIN, I JUST WANTED TO CLARIFY AGAIN THE LINE OF  
14 SORT OF REPORTING FOR YAHOO.

15 YOU SAID THAT YOUR CONTENT MODERATION TEAM FILES  
16 CYBERTIPS, BUT THEN ECIT BECOMES INVOLVED IF THERE'S  
17 AGGRAVATING FACTORS.

18 A. THAT'S CORRECT. THE MODERATION TEAM, THEY'RE ALSO  
19 REFERRED TO AS THE TRUST AND SAFETY TEAM. THEY'VE HAD A  
20 REBRANDING.

21 THEY ARE RESPONSIBLE FOR THE DAY IN AND DAY OUT OF  
22 ESSENTIALLY CONTENT MODERATION ON OUR PLATFORMS. THAT  
23 INCLUDES, LIKE I MENTIONED EARLIER, HATE SPEECH, IT INCLUDES  
24 TERRORISM, IT INCLUDES A LOT OF OBJECTIONABLE CONTENT, AS WELL  
25 AS CHILD SEXUAL ABUSE.

1            THAT TEAM, WHEN THEY BECOME AWARE AND VIEW CHILD SEXUAL  
2 ABUSE THAT MAY HAVE BEEN DETECTED, EITHER PROACTIVELY THROUGH  
3 SCANNING OR REACTIVELY FROM ABUSE REPORTS FROM USERS, THEY  
4 REPORT THAT CONTENT TO NCMEC.

5            AND THEN THE ECIT TEAM, ON A DAILY BASIS, REVIEWS ALL OF  
6 THE REPORTS THAT HAVE BEEN SENT THE PRIOR DAY AND LOOKS FOR  
7 THOSE AGGRAVATING FACTORS.

8            Q.    OKAY. AND ONE OF THE THINGS THAT ECIT DOES, AS PART OF  
9 ITS ROLE, IS TO FILE SUPPLEMENTAL REPORTS THAT EXPLAIN WHY  
10 THERE'S AGGRAVATING FACTORS?

11          A.    YES. AND THIS HAPPENS ON A DAILY BASIS WITH, YOU KNOW,  
12 PROBABLY RIGHT NOW ABOUT 20 A WEEK OR SO.

13          Q.    I SEE.

14                OKAY. THAT'S IT, YOUR HONOR.

15                THE COURT: ALL RIGHT.

16                ANY RECROSS?

17                MR. ARCHER: YES, YOUR HONOR.

18                THE COURT: GO AHEAD, PLEASE.

19                                **RECROSS-EXAMINATION**

20                BY MR. ARCHER:

21                Q.    SO YOU MENTIONED JUST NOW THE LOSS OF THE YAHOO APP FROM,  
22 WAS IT GOOGLE AND APPLE STORES BECAUSE OF TUMBLR?

23                A.    IT WAS THE TUMBLR APP BEING REMOVED FROM THE APPLE ITUNES  
24 STORE, YES.

25                Q.    OKAY. GOT IT. SO THAT OCCURRED IN ABOUT 2018 SOMETIME?

1 A. AT THE END OF 2018, YES.

2 Q. THE END OF 2018. AND THAT WAS REMEDIED BY DEACTIVATING  
3 THE ACCOUNT IN QUESTION?

4 A. IT WAS NOT. THE COMPANY HAD TO MAKE A VERY ROBUST  
5 REPRESENTATION TO APPLE ABOUT THEIR -- SO THE APP WAS REMOVED  
6 BECAUSE THERE WAS ONE BLOG THAT APPLE DETECTED OUT OF THE 300  
7 MILLION BLOGS ON THE PLATFORM THAT HAD CHILD PORNOGRAPHY.

8 AND AS PART OF OUR PROCESS TO GET BACK INTO THE APP STORE,  
9 WE HAD TO MAKE REPRESENTATIONS AND EXPLAIN OUR PROCESS FOR  
10 HANDLING CHILD SEXUAL ABUSE MATERIALS, NOT JUST THAT ONE BLOG  
11 IN QUESTION, BUT WHAT OUR ENTIRE PROCESS WAS, WHICH INCLUDED  
12 THE ECIT INVESTIGATION SUPPLEMENTAL INVESTIGATIONS.

13 THIS ACTUALLY WENT ALL THE WAY UP TO THE VERIZON BOARD OF  
14 DIRECTORS, WHO WAS RECENTLY BRIEFED ON VERIZON'S POLICY NOW FOR  
15 CHILD SEXUAL ABUSE MATERIAL.

16 MR. ARCHER: OKAY. NOTHING FURTHER.

17 THANK YOU.

18 THE COURT: OKAY. ANYTHING ELSE?

19 MS. HARRIS: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. MAY THIS WITNESS BE EXCUSED  
21 SUBJECT TO RECALL OR NOT SUBJECT TO RECALL?

22 MS. HARRIS: I DON'T BELIEVE THAT THE GOVERNMENT HAS  
23 ANYTHING FURTHER.

24 I DO NOTE THAT MR. ZADIG IS LOCAL, SO IF THERE ARE ANY  
25 FURTHER QUESTIONS FOR HIM LATER ON, WE WILL -- WE ARE HAPPY TO

1 SUBMIT ANOTHER SUBPOENA FOR HIM.

2 THE COURT: I DON'T THINK THAT'S NECESSARY.

3 MS. HARRIS: OKAY.

4 MR. ARCHER: NOT SUBJECT TO RECALL.

5 THE COURT: OKAY.

6 MS. HARRIS: THAT'S FINE.

7 THE COURT: OKAY. THEN YOU'RE EXCUSED AND YOU'VE  
8 COMPLETED YOUR TESTIMONY FOR THIS HEARING.

9 I AM NOT GOING TO HAVE A FRANKS HEARING.

10 MS. HARRIS: OKAY.

11 THE COURT: SO WHO'S YOUR NEXT WITNESS?

12 MS. HARRIS: IT WOULD BE -- LET ME CHECK AND SEE IF  
13 AGENT SCHELBLE IS HERE.

14 THE COURT: OKAY.

15 MS. HARRIS: AND I BELIEVE AGENT MARCEAU IS OUTSIDE.

16 THE COURT: OKAY.

17 MS. HARRIS: SO LET ME CHECK.

18 THE COURT: ALL RIGHT. BUT THESE ARE GOING TO BE  
19 SHORT; CORRECT?

20 MS. HARRIS: YES, YOUR HONOR, VERY SHORT.

21 THE COURT: OKAY.

22 (PAUSE IN PROCEEDINGS.)

23 MS. HARRIS: THE GOVERNMENT CALLS SPECIAL AGENT  
24 SCOTT SCHELBLE.

25 THE COURT: ALL RIGHT. IF YOU WOULD PLEASE COME

1 FORWARD TO BE SWORN IN.

2 THE WITNESS: ABSOLUTELY.

3 THE CLERK: GOOD AFTERNOON, SIR.

4 THE WITNESS: HI. HOW ARE YOU?

5 THE CLERK: FINE.

6 PLEASE RAISE YOUR RIGHT HAND.

7 **(GOVERNMENT'S WITNESS, SCOTT SCHELBLE, WAS SWORN.)**

8 THE WITNESS: I DO.

9 THE CLERK: THANK YOU. PLEASE HAVE A SEAT.

10 PLEASE STATE AND SPELL YOUR FULL NAME FOR THE RECORD.

11 THE WITNESS: ABSOLUTELY. IS THIS OKAY FOR YOU?

12 OKAY. MY NAME IS SCOTT SCHELBLE. THE LAST NAME IS  
13 SPELLED S-C-H-E-L-B, AS IN BOY, L-E.

14 **DIRECT EXAMINATION**

15 BY MS. HARRIS:

16 Q. AGENT SCHELBLE, ARE YOU EMPLOYED?

17 A. YES, I AM.

18 Q. WHERE?

19 A. WITH THE FEDERAL BUREAU OF INVESTIGATION.

20 Q. AND WHAT IS YOUR POSITION WITH THE FBI?

21 A. CURRENTLY I'M THE ASSISTANT SPECIAL AGENT IN CHARGE OF THE  
22 SAN FRANCISCO CRIMINAL BRANCH.

23 Q. OKAY. HOW LONG HAVE YOU BEEN EMPLOYED WITH THE FBI?

24 A. SINCE FEBRUARY OF 2005.

25 Q. AND HAVE YOU HELD ANY OTHER POSITIONS WITH THE FBI?

1 A. YES. MY ENTRY LEVEL POSITION WAS AS A SPECIAL AGENT, AND  
2 THEN IN 2012, I WAS PROMOTED TO THE POSITION OF SUPERVISORY  
3 SPECIAL AGENT.

4 Q. OKAY. CAN YOU BRIEFLY EXPLAIN YOUR EDUCATIONAL  
5 BACKGROUND, TRAINING, AND EXPERIENCE?

6 A. YEAH. EDUCATION, I HAVE A BACHELOR'S DEGREE IN GOVERNMENT  
7 WITH A MINOR IN ECONOMICS.

8 I HAVE A MASTER'S DEGREE IN PUBLIC ADMINISTRATION WITH A  
9 FOCUS ON CRIMINAL JUSTICE.

10 AFTER COMPLETING MY EDUCATION, I WAS A POLICE OFFICER IN  
11 COLORADO FOR JUST OVER SIX YEARS BEFORE I JOINED THE FBI IN  
12 2005.

13 Q. AT SOME POINT, WERE YOU THE FBI'S LIAISON TO NCMEC?

14 A. YES. I WAS THE FBI'S LIAISON TO NCMEC FROM APPROXIMATELY  
15 FEBRUARY OF 2013 TO APRIL OF 2015.

16 Q. AND WHAT IS NCMEC IN YOUR UNDERSTANDING?

17 A. NCMEC STANDS FOR THE NATIONAL CENTER FOR MISSING AND  
18 EXPLOITED CHILDREN. IT'S A NON-GOVERNMENTAL ORGANIZATION  
19 HEADQUARTERED IN ALEXANDRIA, VIRGINIA WITH GENERALLY A FOCUS TO  
20 PREVENT -- ASSIST IN CRIMES INVOLVING MISSING AND SEXUALLY  
21 EXPLOITED CHILDREN.

22 Q. DID YOU PREVIOUSLY FILE A DECLARATION IN THIS MATTER?

23 A. YES, I DID.

24 Q. SO I'M SHOWING YOU --

25 EXCUSE ME, I'LL APPROACH, YOUR HONOR (HANDING).

1           -- WHAT'S BEEN FILED IN THIS LITIGATION AS GOVERNMENT'S  
2       EXHIBIT M. IS THAT THE DECLARATION THAT YOU FILED?

3       A. YES, IT IS.

4       Q. M, AS IN MARY.

5           WHO WROTE THE DECLARATION?

6       A. I DID.

7       Q. ARE THE STATEMENTS IN THE DECLARATION TRUE BASED ON YOUR  
8       OWN EXPERIENCES AND OBSERVATIONS WITHIN THE SCOPE OF YOUR  
9       ASSIGNMENT TO NCMEC AND EMPLOYMENT WITH THE FBI?

10      A. YES, IT IS.

11      Q. ARE THE STATEMENTS IN THE DECLARATION ALSO BASED ON THE  
12      EXPERIENCES AND OBSERVATIONS OF OTHER AGENTS THAT YOU WORKED  
13      WITH?

14      A. YES.

15      Q. ARE THE STATEMENTS YOU MADE IN THE DECLARATION TRUE AND  
16      ACCURATE TO THE BEST OF YOUR KNOWLEDGE?

17      A. YES.

18      Q. HAVE ANY FACTS OR CIRCUMSTANCES RELATED TO THE CONTENTS OF  
19      YOUR DECLARATION CHANGED SINCE YOU SIGNED IT IN DECEMBER OF  
20      2018 SUCH THAT THE DECLARATION IS NO LONGER TRUE AND ACCURATE?

21      A. NO. THE ONLY MODIFICATION I WOULD POINT OUT IS MY  
22      POSITION WAS DIFFERENT AT THE TIME THAT I SIGNED THIS.

23      Q. SO YOU WERE PROMOTED SINCE THE TIME?

24      A. YES, I WAS -- YES, THAT'S CORRECT.

25      Q. NOW, IN PARAGRAPH 3 -- I'M GOING TO DIRECT YOU TO



1 PARAGRAPH 3 OF YOUR DECLARATION.

2 A. OKAY.

3 Q. YOU STATED THAT NCMEC RECEIVED AN AVERAGE OF 1.5 MILLION  
4 CYBERTIPLINE REPORTS EACH MONTH WHILE YOU WERE THERE?

5 A. YES. THAT WAS A -- THAT IS A GENERALIZED NUMBER. DURING  
6 MY TIME AT NCMEC, THE AMOUNT OF CYBERTIPLINE REPORTS THAT THE  
7 CENTER RECEIVED WAS SORT OF AT A CONSTANT RATE OF GROWTH, WHICH  
8 WAS, YOU KNOW, TYPICALLY EXPLAINED BY THE CREATION OF NEW  
9 PLATFORMS, NEW ISP'S, NEW ESP'S THAT FELL UNDER THAT MANDATORY  
10 REPORTING. SO AS MORE COMPANIES CAME, THE NUMBER WOULD  
11 INCREASE. BUT THAT'S A GENERAL AVERAGE TOWARDS THE ENDS OF MY  
12 TENURE THERE.

13 Q. AND IN PARAGRAPH 2, YOU DISCUSSED YOUR ROLE AS A  
14 SUPERVISORY SPECIAL AGENT ASSIGNED AS THE LIAISON TO NCMEC; IS  
15 THAT RIGHT?

16 A. YES.

17 Q. WHAT DOES THAT ROLE ENTAIL IN TERMS OF THE PROCESSING OF  
18 THOSE -- YOU KNOW, ASSISTANCE WITH THE CYBERTIPS THAT COME IN?

19 A. SO IT HAD A COUPLE OF DIFFERENT ASPECTS TO IT. FIRST, I  
20 WAS THE -- I SUPERVISED A SMALL STAFF OF FBI EMPLOYEES WHO WERE  
21 ASSIGNED, ASSIGNED TO NCMEC.

22 IN TERMS OF OUR FUNCTION, IT WAS KIND OF THREE-PRONGED.  
23 FIRST, THERE IS WHAT IS CALLED THE CHILD VICTIM IDENTIFICATION  
24 PROGRAM, OR CVIP, AND THAT IS THE PROGRAM THAT WAS HOUSED AT  
25 NCMEC IN WHICH ANALYSTS AT NCMEC WOULD LOOK AT IMAGES OF CHILD

1 PORNOGRAPHY AND -- IN ORDER TO MAKE FEDERAL PROSECUTIONS, YOU  
2 KNOW, AN ACTUAL CHILD HAD TO BE IDENTIFIED.

3 SO NCMEC EFFECTIVELY HAD THE, THE LIST OF DATABASES THAT  
4 WOULD SAY "THIS IMAGE HERE OF THIS EIGHT-YEAR-OLD GIRL IS  
5 ACTUALLY THIS PERSON," AND THAT WOULD ALSO LINK UP THE  
6 INVESTIGATOR WHO ORIGINALLY WORKED THAT CASE SO THAT  
7 INVESTIGATOR COULD THEN BE BROUGHT IN, UTILIZED AS A WITNESS TO  
8 TESTIFY, "I INVESTIGATED THIS CASE, I KNOW THIS CHILD WAS  
9 SEXUALLY ABUSED, SHE WAS EIGHT YEARS OLD AT THE TIME, SHE WAS A  
10 MINOR AND WAS A REAL PERSON." THAT WAS ONE OF THE FUNCTIONS.

11 THE SECOND FUNCTION AS IT PERTAINED TO THE CYBERTIPLINE  
12 REPORTS WAS THE FBI WOULD LOOK AT CERTAIN CYBERTIPLINE REPORTS  
13 THAT NCMEC RECEIVED.

14 IF NCMEC ANALYSTS WERE NOT ABLE TO IDENTIFY A VENUE OR A  
15 JURISDICTION FOR THAT SPECIFIC CYBERTIPLINE REPORT, IT WOULD GO  
16 INTO WHAT WAS KIND OF REFERRED TO AS THE FEDERAL QUEUE. AND  
17 WITHIN THE FEDERAL QUEUE, THE VARIOUS AGENCIES WHO HAD A  
18 DETAILED PRESENCE AT NCMEC WOULD THEN LOOK AT THOSE  
19 CYBERTIPLINE REPORTS AND SEE IF THERE WERE ACTIONS THAT COULD  
20 BE TAKEN THAT WOULD IDENTIFY A VENUE OR JURISDICTION, AT WHICH  
21 POINT WE WOULD THEN, ASSUMING A CYBERTIPLINE REPORT WAS  
22 SOMETHING WE WERE INTERESTED IN INVESTIGATING, WE WOULD THEN  
23 FORWARD THAT CYBERTIPLINE REPORT TO AN APPROPRIATE FIELD OFFICE  
24 TO INITIATE THE INVESTIGATION.

25 Q. WHAT WERE THE PRIORITIES IN TERMS OF PROCESSING THESE

1 REPORTS?

2 A. SO GENERALLY SPEAKING, OUR PRIORITIES WERE BASED ON THE  
3 NOTION OF WHAT CAUSED THE GREATEST HARM TO A CHILD.

4 AND IF I COULD SORT OF DIFFERENTIATE SORT OF TWO EXAMPLES.  
5 ONE EXAMPLE MIGHT BE A REPORT WHERE THE USER OF A PLATFORM WAS  
6 TRADING IMAGES OF CHILD PORNOGRAPHY. THAT WOULD CERTAINLY BE A  
7 CYBERTIPLINE REPORT THAT WOULD BE OF INTEREST TO THE FBI OR  
8 OTHER AGENCIES.

9 AND NOT TO MINIMIZE IT WAS CHILD PORNOGRAPHY, BECAUSE THEY  
10 ARE IMAGES OF THE SEXUAL ABUSE OF CHILDREN.

11 BUT IF YOU WERE TO COMPARE AN OLD SERIES TO A CYBERTIPLINE  
12 REPORT OF NEW IMAGES THAT HAD NEVER BEFORE BEEN SEEN THAT WERE  
13 PERHAPS INDICATIVE OF A NEW CHILD BEING ABUSED OR REAL TIME  
14 ABUSE HAPPENING, THAT WAS GOING TO BE THE PRIORITY BECAUSE THE  
15 DETERMINATION WAS THOSE NEW IMAGES REPRESENTED THE GREATEST  
16 DANGER TO A CHILD. SO THAT WOULD HAVE BEEN THE PRIORITY.

17 Q. AND WHY DOES THE FBI HAVE A LIAISON SITTING AT NCMEC?

18 A. FOR A COUPLE OF REASONS.

19 SO, FIRST, WE TALKED ABOUT THE CHILD VICTIM IDENTIFICATION  
20 PROGRAM. THAT REQUIRES CHILD PORNOGRAPHY TO BE STORED AT THE  
21 NATIONAL CENTER. SO IT WAS IMPORTANT TO HAVE LAW ENFORCEMENT  
22 OFFICERS PRESENT AS THEY WERE -- THEY BASICALLY HAD A LEGAL  
23 EXEMPTION TO BASICALLY BE IN CONTROL OF THOSE FILES.

24 SECOND, FROM A DECONFLICTION STANDPOINT -- IT WAS VERY  
25 IMPORTANT TO UNDERSTAND WHAT MY COUNTERPARTS AT HSI WERE DOING,

1 WHAT MY COUNTERPARTS AT UNITED STATES POSTAL INSPECTOR SERVICE  
2 OR THE U.S. MARSHALS, TO HAVE AN UNDERSTANDING OF WHO WAS  
3 WORKING WHAT.

4 FROM A DECONFLICTION STANDPOINT, WE WANT TO MAKE SURE THAT  
5 WE DON'T HAVE A LAW ENFORCEMENT AGENCY PERHAPS TARGETING  
6 ANOTHER LAW ENFORCEMENT AGENCY, OR AN ISSUE WHERE WE MIGHT HAVE  
7 A CONFLICT OF RESOURCES.

8 SOME OF THE WORST CASE SCENARIOS WOULD BE WHAT WE WOULD  
9 REFER TO AS SORT OF -- THE INDUSTRY TERM IS BLUE ON BLUE, WHICH  
10 WOULD MEAN YOU WOULD HAVE TWO AGENCIES GOING AFTER -- YOU KNOW,  
11 PERHAPS EXECUTING A SEARCH WARRANT ON THE SAME TARGET WITHOUT  
12 KNOWING ABOUT EACH OTHER. THAT OBVIOUSLY REPRESENTS A SAFETY  
13 PROBLEM.

14 SO FROM A SAFETY PERSPECTIVE, DECONFLICTION WAS IMPORTANT.

15 FROM A LIAISON PERSPECTIVE AND MANAGING RESOURCES, IT WAS  
16 HELPFUL TO UNDERSTAND WHO WAS DOING WHAT, WHAT TYPICAL ASPECTS,  
17 WHAT SPACE WITHIN THIS VIOLATION WERE DIFFERENT AGENCIES  
18 FOCUSSED ON.

19 Q. AND WERE ALL OF YOUR INTERACTIONS WITH ONLY LAW  
20 ENFORCEMENT AGENCIES?

21 A. NO. PRIMARILY WITH LAW ENFORCEMENT AGENCIES, BUT I ALSO  
22 HAD INTERACTIONS WITH STAFF AT THE NATIONAL CENTER, WHETHER IT  
23 WAS FACILITATING THE STATUS OF A CVIP REPORT THAT WE WERE  
24 WAITING FOR ON A CASE PROSECUTION, PERHAPS IT WAS TO UNDERSTAND  
25 BETTER CLARIFICATION OF A CYBERTIPLINE REPORT IN TERMS OF WHAT

1 WAS DONE.

2 THERE WOULD ALSO BE INSTANCES WHERE I HAD LIAISON CONTACTS  
3 WITH REPRESENTATIVES OF COMPANIES WHO PROVIDED CYBERTIPLINE  
4 REPORTS TO NCMEC.

5 Q. AND WHAT TYPES OF COMMUNICATIONS DID YOU HAVE WITH THE  
6 COMPANIES THAT FILED CYBERTIPLINE REPORTS?

7 A. GENERALLY SPEAKING, IT WAS TWO-FOLD. ONE WAS TO  
8 UNDERSTAND -- TO BETTER UNDERSTAND THEIR INTERNAL PROCESSES FOR  
9 HOW THAT COMPANY OR HOW THAT PLATFORM PROCESSED THEIR  
10 CYBERTIPLINE REPORTS.

11 IT BECAME, YOU KNOW, OF IMPORTANCE TO UNDERSTAND, DID THIS  
12 COMPANY USE TECHNOLOGY, SUCH AS PHOTO DNA OR A HASH VALUE TO  
13 IDENTIFYING AN IMAGE? OR DID THE COMPANY ACTUALLY HAVE  
14 EMPLOYEES WHO ACTUALLY PHYSICALLY LOOKED AT AN IMAGE? YOU  
15 KNOW, WHAT WAS THEIR PROCESS FOR IDENTIFYING AN IMAGE OF  
16 SUSPECTED CHILD PORNOGRAPHY?

17 IN ADDITION, THERE WAS ALSO -- I WANTED TO UNDERSTAND WHAT  
18 THEIR CURRENT POLICIES AND PROCEDURES WERE. SOME COMPANIES, IF  
19 THEY RECEIVED A SUBPOENA FROM THE FBI FOR A USER, SOME  
20 COMPANIES HAD A POLICY OF NOTIFYING THAT USER THAT THEY WERE IN  
21 RECEIPT OF A SUBPOENA. OTHER COMPANIES WOULD NOT.

22 IT WAS IMPORTANT IN OUR INVESTIGATIONS THAT IF A COMPANY'S  
23 POLICY WAS TO PROVIDE A SUBPOENA -- WAS TO NOTIFY THEIR CLIENT,  
24 THEN WE WOULD SEEK AN APPLICATION WITH THE COURT FOR A COURT  
25 ORDER TO PREVENT THE COMPANY FROM MAKING THAT KIND OF A

1 DISCLOSURE BECAUSE THAT COULD COMPROMISE THE INVESTIGATION.

2 Q. I SEE. SO IN PARAGRAPH 10 -- WELL, FIRST OF ALL, LET ME  
3 JUST BACK UP.

4 DID THESE COMMUNICATIONS THAT YOU HAD WITH THE ISP'S AND  
5 OTHER COMPANIES THAT WERE REPORTING TO NCMEC, THE CYBERTIP  
6 REPORTS, WERE THEY INVESTIGATIVE CONTACTS?

7 A. NO. I WOULD DESCRIBE THEM AS SORT OF LIAISON CONTACTS.  
8 THEY WERE TYPICALLY SOMEBODY WHO WAS WITHIN THEIR LEGAL PROCESS  
9 UNIT OR A TRUST AND SAFETY UNIT. EACH COMPANY WAS ORGANIZED A  
10 LITTLE BIT DIFFERENTLY. BUT IT WAS TYPICALLY SOMEBODY WHO  
11 MIGHT JUST BE LISTED WITHIN THE COMPANY'S PROFILE AS A POINT OF  
12 CONTACT FOR QUESTIONS RELATED TO SUBPOENAS OR SEARCH WARRANTS.

13 Q. WOULD THERE EVER BE AN EXCHANGE OF INVESTIGATIVE  
14 INFORMATION ABOUT THE TARGET OF THE CYBERTIP FROM THE FBI TO  
15 THE ISP REPORTER?

16 A. NO. NO, THERE WOULD NOT. AT MOST, IT PERHAPS WOULD BE  
17 CLARIFICATION OF A USER NAME OR A HANDLE, YOU KNOW. FOR  
18 EXAMPLE, ON A FACSIMILE, A 1 COULD LOOK SIMILAR TO A LOWER CASE  
19 L. SO THERE MIGHT BE SOME TYPE OF CLARIFICATION OF WHAT THE  
20 HANDLE WAS. BUT NOTHING IN THE SENSE OF WHAT THE FACTS OF THE  
21 CASE WERE.

22 THE CLOSEST THAT WOULD EVER COME IS IF THERE WAS AN  
23 APPLICATION FOR AN EMERGENCY DISCLOSURE WHERE THERE WAS A RISK  
24 OF IMMINENT DEATH OR SERIOUS PHYSICAL INJURY TO A CHILD, AND IN  
25 THOSE TYPES OF APPLICATIONS, YOU KNOW, SOME FACTUAL BASIS THAT

1 JUSTIFIED THE EMERGENCY DISCLOSURE WOULD BE PROVIDED.

2 Q. SO I'M GOING TO DIRECT YOU TO PARAGRAPH 4 OF YOUR  
3 DECLARATION.

4 A. YES.

5 Q. SO YOU STATE THAT IT'S NOT UNUSUAL FOR AN ELECTRONIC  
6 SERVICE PROVIDER TO CONTACT NCMEC OR THE FBI TO BRING ATTENTION  
7 TO REPORTS THAT APPEAR TO PRESENT A SITUATION OF IMMINENT HARM  
8 TO CHILDREN. IS THAT CORRECT?

9 A. CORRECT, YES.

10 Q. OKAY. AND WHAT DO YOU CLASSIFY AS "IMMINENT HARM TO  
11 CHILDREN"?

12 A. I WOULD CLASSIFY IMMINENT HARM AS ANYTHING THAT WOULD  
13 POSSIBLY RISK THE LIFE OR SERIOUS PHYSICAL INJURY OF A CHILD,  
14 SO CHILD ABDUCTION, A KIDNAPPING, INSTANCES WHERE WE'RE LOOKING  
15 AT A PREPUBESCENT CHILD WHO WAS BEING PHYSICALLY ASSAULTED,  
16 TORTURED, SADISTIC TYPE ACTS --

17 Q. AND --

18 A. -- THAT WOULD RESULT IN PERMANENT SCARS, INJURIES. SO  
19 INJURIOUS PHYSICAL INJURY.

20 Q. AND DURING YOUR TIME THERE, HOW OFTEN WOULD YOU SAY THAT  
21 YOU SAW THAT TYPE OF REPORT?

22 A. HARD TO QUANTIFY, BUT IT WOULD HAPPEN. I'M NOT -- IT'S  
23 NOT A DAILY BASIS OR A WEEKLY BASIS.

24 BUT IF, IF A -- IF AN ISP OR A COMPANY OR PLATFORM CAME  
25 ACROSS CONTENT THAT WAS PARTICULARLY DISTURBING, YEAH, THEY

1           WOULD -- THEY WOULD PERHAPS MAKE A PHONE CALL OR REACH OUT.

2           AND MOST COMPANIES KNEW OR HAD AN IDEA IN TERMS OF THE  
3           TYPE OF VOLUME OF CYBERTIPLINE REPORTS THAT WOULD COME IN, SO  
4           SOMETIMES THEY JUST WANTED TO MAKE SURE THAT IF SOMETHING  
5           APPEARED PARTICULARLY EGREGIOUS, THAT THEY WOULD AT LEAST  
6           PROVIDE, "HEY, WOULD YOU MIND LOOKING AT THIS CYBERTIPLINE  
7           REPORT NUMBER BECAUSE IT SEEMS LIKE IT'S UNUSUALLY HORRIFIC."

8           Q.    SO IN PARAGRAPH 6 OF YOUR DECLARATION, YOU DESCRIBE A  
9           MEETING THAT YOU ATTENDED ON OCTOBER 6TH, 2014; IS THAT  
10          CORRECT?

11          A.    YES, THAT'S CORRECT.

12          Q.    AND CAN YOU DESCRIBE THE CIRCUMSTANCES PROMPTING THAT  
13          MEETING?

14          A.    YEAH. PRIOR TO THIS MEETING, I HAD RECEIVED -- I WAS  
15          CONTACTED BY SEAN ZADIG OF YAHOO -- I BELIEVE THE INITIAL  
16          CONTACT WAS OVER E-MAIL -- JUST ASKING TO MEET ABOUT SOMETHING  
17          THAT THEY HAD FOUND WITHIN THEIR PLATFORM.

18          Q.    OKAY. AND WHEN WAS THAT MEETING HELD?

19          A.    THE MEETING WAS ON OCTOBER 6TH OF 2014.

20          Q.    AND WHY WAS THE MEETING HELD?

21          A.    SEAN AND HIS TEAM OVER AT YAHOO WANTED TO EFFECTIVELY  
22          PRESENT SOMETHING THEY HAD FOUND WITHIN THEIR PLATFORM  
23          INVOLVING PAYMENTS OVER XOOM AND THE USE OF WEBCAMS THAT WERE  
24          BASICALLY, YOU KNOW, SHOWING ACTUAL, ACTUAL ABUSE OF  
25          CHILDREN --



1 Q. DID --

2 A. -- THAT WAS OCCURRING, THEY THOUGHT, IN THE PHILIPPINES.

3 Q. OKAY. WAS IT YOUR UNDERSTANDING THAT THAT MATERIAL HAD  
4 BEEN PROVIDED TO NCMEC IN SOME WAY?

5 A. YEAH, YEAH. HE HAD INDICATED THAT, THAT THERE WERE  
6 NUMEROUS CYBERTIPLINE REPORTS THAT WERE SENT. I THINK, FROM  
7 YAHOO'S PERSPECTIVE, THEY THOUGHT THEY WERE RELATED.

8 Q. NOW, AT THE MEETING -- SO WERE YOU PRESENT AT THE MEETING?

9 A. YES.

10 Q. AND WHO ELSE WAS THERE?

11 A. A COLLEAGUE OF MINE FROM THE DEPARTMENT OF HOMELAND  
12 SECURITY, HSI, NEIL O'CALLAGHAN, AND I BELIEVE I HAD ONE OF MY  
13 ANALYSTS ATTEND AS WELL.

14 AND IF I RECALL CORRECTLY, I THINK SEAN HAD SOMEBODY THERE  
15 AS WELL. THERE WERE AT LEAST PROBABLY TWO MEETINGS, AND I'M  
16 NOT SURE IF HIS COLLEAGUE CAME TO THE FIRST ONE OR THE SECOND  
17 ONE.

18 Q. OKAY. AND WHAT WAS DISCUSSED AT THE MEETING?

19 A. IN FAIRLY GENERAL TERMS, SEAN HAD SORT OF TALKED ABOUT  
20 WHAT THEY, WHAT THEY WERE SEEING ON THEIR PLATFORM IN TERMS OF  
21 WEBCAM ABUSE OF CHILDREN, THE CHILDREN THEY THOUGHT WERE IN THE  
22 PHILIPPINES; PAYMENT WAS BEING TRANSFERRED OVER, OVER XOOM; AND  
23 I THINK THEY WERE CURIOUS IF THIS WAS SOMETHING THAT WAS --  
24 THAT WOULD BE OF INTEREST TO THE FEDERAL PARTNERS BECAUSE,  
25 AGAIN, IN THIS CASE THERE WERE, YOU KNOW, DIFFERENT POSSIBLE

1 VENUES FOR INVESTIGATION.

2 Q. I SEE. NOW, DID THE FBI OR DHS -- BASED ON YOUR PRESENCE  
3 AT THE MEETING, DID THE FBI OR DHS REQUEST THAT YAHOO CONDUCT  
4 ANY FOLLOW-UP INVESTIGATIONS BASED ON THE INFORMATION THAT IT  
5 HAD SHARED IN THE CYBERTIPS?

6 A. NO.

7 Q. DID YAHOO OFFER TO DO ANY FOLLOW-UP INVESTIGATION ON THE  
8 USERS THAT IT REPORTED IN THE CYBERTIPS?

9 A. NO. I THINK THEY -- AT ONE MEETING THEY HAD INDICATED  
10 THAT THEY WOULD BE -- THAT WHAT WAS GOING TO BE FILED WAS A  
11 SUPPLEMENTAL REPORT, AND SOMETIMES AN ISP WOULD FILE A  
12 CYBERTIPLINE REPORT AND THEN THEY WOULD LATER FOLLOW UP WITH A  
13 SUPPLEMENTAL REPORT WHICH JUST INCLUDED ADDITIONAL INFORMATION  
14 THAT THEY HAD DONE.

15 BUT GENERALLY SPEAKING, IF YAHOO WAS GOING TO -- YAHOO WAS  
16 GOING TO DO WHATEVER THEIR OWN INTERNAL POLICIES HAD THEM DO.

17 Q. UM-HUM. DID YOU COLLECT ANY EVIDENCE AT THAT MEETING THAT  
18 WAS NOT ALREADY PROVIDED TO NCMEC?

19 A. NO. THIS WAS A, SORT OF A LIAISON MEETING TO TALK ABOUT  
20 SOMETHING THEY WERE SEEING, TO MAKE US AWARE OF A POTENTIAL  
21 CRIME THEY WERE SEEING WITHIN THEIR PLATFORMS.

22 Q. DID YOU OR AGENT O'CALLAGHAN EVER ASK FOR OR RECEIVE ANY  
23 NON-PUBLIC INFORMATION FROM YAHOO WITHOUT FIRST PROVIDING LEGAL  
24 PROCESS?

25 A. NO.

1 Q. WHAT DID YOU AND AGENT O'CALLAGHAN DO IN RESPONSE TO THE  
2 INFORMATION RECEIVED AT THIS MEETING?

3 A. WE SORT OF -- WE TALKED IT OVER, TRIED TO COME UP WITH A  
4 GAME PLAN IN TERMS OF WHO WOULD BE IN THE BEST POSITION TO  
5 HANDLE A CASE OF THIS SORT OF POTENTIAL MAGNITUDE WHERE WE  
6 HAD -- IT WOULD HAVE REQUIRED LIAISONS AND A PRESENCE IN THE  
7 PHILIPPINES, AS WELL AS A FAIRLY RESOURCE INTENSIVE OPERATION.

8 YOU KNOW, I THINK WE HAD COME TO THE CONCLUSION THAT WE  
9 SHOULD -- WE WOULD BRIEF IT UP OUR RESPECTIVE CHAINS OF  
10 COMMANDS, NEIL AT HSI, AND I WOULD GO TO MY CHAIN OF COMMAND TO  
11 GET AN IDEA OF WHAT THEY WANTED.

12 BUT WE THOUGHT THERE WAS POTENTIALLY A GOOD CASE AND IT  
13 WOULD BE WORTHY OF THE AGENCY'S RESOURCES.

14 Q. OKAY.

15 THE COURT: I'M SORRY. IT'S 2:40 NOW. LET'S GO  
16 AHEAD AND TAKE A TEN MINUTE BREAK. WE'LL TAKE ANOTHER BREAK AT  
17 3:30 --

18 MS. HARRIS: SURE.

19 THE COURT: -- WHICH WILL ALSO LAST TEN MINUTES.

20 YOU MAY STEP DOWN DURING THE BREAK.

21 THE WITNESS: THANK YOU, YOUR HONOR.

22 THE COURT: OKAY.

23 (RECESS FROM 2:41 P.M. UNTIL 2:52 P.M.)

24 THE COURT: OKAY. WOULD YOU PLEASE RETAKE THE STAND?

25 THE WITNESS: YES, YOUR HONOR.

1 THE COURT: GO AHEAD, PLEASE.

2 MS. HARRIS: THANK YOU.

3 Q. SO BEFORE THE BREAK, WE WERE DISCUSSING AN OCTOBER 6TH,  
4 2014 MEETING --

5 A. YES.

6 Q. -- BETWEEN YOURSELF AND MR. ZADIG OF YAHOO AND OTHER  
7 AGENTS AND ANALYSTS AT FBI.

8 A. UM-HUM.

9 Q. OKAY. SO WAS THIS MEETING DOCUMENTED IN A 302 REPORT?

10 A. NO.

11 Q. AND WHY NOT?

12 A. WELL, ONE, IT WASN'T TESTIMONY THAT WAS TAKEN. NO  
13 EVIDENCE WAS TAKEN. THIS WAS A, SORT OF A LIAISON MEETING.  
14 YAHOO WANTED TO TALK WITH HSI AND THE FBI. THAT WAS THE EXTENT  
15 OF IT.

16 Q. NOW, IN PARAGRAPH 9 OF YOUR DECLARATION, YOU DESCRIBED  
17 SOME COMMUNICATIONS THAT YOU FOUND WITH MR. ZADIG; IS THAT  
18 CORRECT?

19 A. YES.

20 Q. AND HOW WAS IT THAT YOU CAME ABOUT THOSE COMMUNICATIONS?

21 A. I RECEIVED A REQUEST TO SEARCH FOR ANY E-MAILS INVOLVING  
22 THIS INVESTIGATION, AND SO I DID A SEARCH OF MY E-MAIL ACCOUNT  
23 AND FOUND THE E-MAILS AND PROVIDED THEM.

24 Q. OKAY. WAS THAT REQUEST FROM ME?

25 A. I DON'T KNOW IF IT WAS DIRECTLY FROM YOU, BUT IT WAS

1 CERTAINLY -- YEAH, THROUGH YOU. I CAN'T RECALL IF IT CAME FROM  
2 YOU DIRECTLY OR FROM ONE OF THE AGENTS.

3 Q. THANKS.

4 MAY I APPROACH, YOUR HONOR?

5 THE COURT: GO AHEAD, PLEASE.

6 BY MS. HARRIS:

7 Q. THIS IS DEFENSE EXHIBIT YY THAT'S BEEN FILED IN THIS  
8 LITIGATION (HANDING).

9 A. OKAY.

10 Q. CAN YOU JUST TAKE A QUICK FLIP THROUGH THAT?

11 A. SURE.

12 (PAUSE IN PROCEEDINGS.)

13 THE WITNESS: OKAY.

14 BY MS. HARRIS:

15 Q. SO, AGAIN, IN PARAGRAPH 9, YOU SAID THAT YOU LOCATED SOME  
16 E-MAIL STRINGS IN RESPONSE TO A DISCOVERY REQUEST?

17 A. YES.

18 Q. ARE THOSE THE E-MAIL STRINGS THAT YOU LOCATED AND  
19 PROVIDED?

20 A. YES. I DON'T BELIEVE I'M ON ALL OF THESE, BUT YES.

21 Q. OKAY. AND DID YOU DESCRIBE THE SUBSTANCE OF THOSE E-MAILS  
22 THAT YOU LOCATED IN PARAGRAPH 9 OF YOUR DECLARATION?

23 A. YEAH. YES, I DID.

24 Q. OKAY. I'M NOT GOING TO GO THROUGH THEM AGAIN.

25 NOW, AT ANY TIME DID YOU OFFER ANY PAYMENTS TO MR. ZADIG

1 IN EXCHANGE FOR ECIT'S OR YAHOO'S REFERRALS TO NCMEC?

2 A. PAYMENT? ABSOLUTELY NOT.

3 Q. DID YOU OFFER ANY REWARDS TO MR. ZADIG OR YAHOO IN  
4 EXCHANGE FOR ECIT'S REFERRALS TO NCMEC?

5 A. NO, I DID NOT.

6 Q. DID YOU OFFER ANY SPECIAL PRIVILEGES OR ACCESS TO  
7 MR. ZADIG OR ANYONE AT YAHOO FOR ECIT'S REFERRALS TO NCMEC?

8 A. NO, I DID NOT.

9 Q. IN PARAGRAPH 10 IN YOUR DECLARATION, YOU DISCUSSED  
10 NEGATIVE IMPACTS TO A CASE IF A COURT WERE TO FIND THAT NCMEC  
11 OR AN ISP WERE ACTING AS A GOVERNMENT AGENT; IS THAT CORRECT?

12 A. YES.

13 Q. WHAT -- CAN YOU EXPLAIN WHAT PROMPTED -- WHAT NEGATIVE  
14 IMPACTS ARE YOU REFERRING TO?

15 A. WELL --

16 MR. ARCHER: OBJECTION, RELEVANCE.

17 THE COURT: OVERRULED.

18 GO AHEAD. YOU MAY ANSWER.

19 THE WITNESS: THANK YOU.

20 SO BASICALLY ABOUT A YEAR BEFORE -- THE PREVIOUS YEAR,  
21 DURING MY TIME AT NCMEC, THERE WAS A CASE ROLLING OUT OF THE  
22 DISTRICT OF MASSACHUSETTS WHICH WAS REFERRED TO AS THE KEITH  
23 DECISION. THAT CASE PERTAINED TO A DISTRIBUTION OF CHILD  
24 PORNOGRAPHY INVESTIGATION IN WHICH I BELIEVE IT WAS AOL HAD  
25 SUBMITTED A REPORT TO THE CYBERTIPLINE, TO NCMEC, AND

1 EFFECTIVELY, IN A MOTIONS HEARING, THE COURT FOUND THAT NCMEC  
2 AND AOL HAD EFFECTIVELY ACTED AS AGENTS OF THE GOVERNMENT,  
3 RESULTING ULTIMATELY IN THE SUPPRESSION OF EVERYTHING THAT  
4 DERIVED FROM THAT, WHICH WAS A SEARCH OF MR. KEITH'S RESIDENCE  
5 AND THE -- YOU KNOW, THE DISCOVERY OF CHILD PORNOGRAPHY.

6 SO IT COMPROMISED THE CASE. SO THAT WAS OBVIOUSLY, YOU  
7 KNOW, A SIGNIFICANT RESULT. IT CHANGED THE WAY NCMEC CONDUCTED  
8 THEIR INTERNAL PROCESSES.

9 AND IT WAS CERTAINLY SOMETHING THAT WE WERE -- THAT WE  
10 MADE SURE, WITHIN THE FBI, THAT WE WERE NOT GOING TO -- WE WERE  
11 NOT GOING TO CREATE AN ENVIRONMENT OR A SITUATION WHICH COULD  
12 BE CONSTRUED AS A THIRD PARTY WAS ACTING AS AN AGENT OF THE  
13 GOVERNMENT.

14 BY MS. HARRIS:

15 Q. WHAT --

16 THE COURT: HAVE YOU ALL PROVIDED THAT CASE?

17 MS. HARRIS: THE GOVERNMENT DIDN'T CITE IT IN ITS  
18 RULINGS, YOUR HONOR -- IN ITS PLEADINGS, YOUR HONOR.

19 MR. ARCHER: KEITH HAS PREVIOUSLY BEEN CITED, BUT I  
20 CAN -- I CAN FIND -- KEITH HAS BEEN CITED IN A NUMBER OF THE  
21 DEFENSE BRIEFS.

22 THE COURT: OKAY.

23 BY MS. HARRIS:

24 Q. AND WHAT ACTIONS DID THE FBI TAKE IN RESPONSE TO THE  
25 RULING?

1       A.     WELL, ONE OF THE PRIMARY ACTIONS THAT THE FBI TOOK -- AND  
2       I THINK I SPOKE OF IT EARLIER -- WAS UNDERSTANDING THE  
3       PROCESSES THAT WERE CONDUCTED BY A PLATFORM.

4             FOR EXAMPLE, SOME COMPANIES WILL USE TECHNOLOGY, WHETHER  
5       IT'S PHOTO DNA OR AN ALGORITHM THAT WE WOULD REFER TO AS A  
6       HASH, TO EFFECTIVELY DIGITALLY SCRUB THEIR PLATFORM FOR CONTENT  
7       THAT WOULD BE CHILD PORNOGRAPHY.   BASICALLY IT'S SORT OF LIKE A  
8       DNA OF A DIGITAL FILE.

9             ONE OF THE ELEMENTS THAT CAME FROM THE KEITH RULING WAS  
10       THAT, YOU KNOW, A PHOTO DNA TECHNOLOGY THAT INDICATED THE  
11       PRESENCE OF CHILD -- OF SUSPECTED CHILD PORNOGRAPHY WAS  
12       ULTIMATELY DEEMED TO BE SORT OF INSUFFICIENT COMPARED TO AN  
13       ACTUAL PERSON OPENING A FILE AND LOOKING AT THAT PHOTOGRAPH AND  
14       VISUALLY SEEING WHAT THE PHOTOGRAPH WAS VERSUS JUST A HASH  
15       MATCH.

16            SO ONE OF THE THINGS WE WANTED TO ENSURE FROM THE FBI'S  
17       PERSPECTIVE WAS WHAT EXACTLY DID A COMPANY DO?

18            SO IF IT WAS UNCLEAR BASED ON THE INFORMATION PROVIDED IN  
19       THAT CYBERTIPLINE REPORT, THEN THERE WOULD BE TIMES THAT WE  
20       WOULD REACH OUT TO THE COMPANY AND ASK, "WHAT EXACTLY WAS YOUR  
21       POLICY?  WHEN YOU CITE THESE THREE IMAGES ON THE CYBERTIPLINE  
22       REPORT AS BEING SUSPECTED CHILD PORNOGRAPHY, IS THIS BASED ON A  
23       HASH MATCH OR DID AN EMPLOYEE WITH THE COMPANY SPECIFICALLY  
24       OPEN UP THESE FILES AND LOOK AT THEM TO SEE WHAT THEY ACTUALLY  
25       CONTAINED?"



1 Q. AND WHY DID YOU ASK FOR THAT INFORMATION?

2 A. AGAIN, EFFECTIVELY JUST TO UNDERSTAND WHAT EXACTLY DID  
3 THIS PRIVATE PARTY DO?

4 BECAUSE WE WANTED TO ENSURE THAT, AS THE GOVERNMENT, WE  
5 WERE NOT GOING TO FURTHER A SEARCH BEYOND WHAT WAS ALREADY DONE  
6 BY THAT PRIVATE PARTY TO RISK ANY SORT OF VIOLATION OF FOURTH  
7 AMENDMENT RIGHTS.

8 Q. SO IS IT FAIR TO SAY THAT THAT CHANGE, THAT POLICY CHANGE,  
9 WAS DONE TO COMPLY WITH THE RULING?

10 A. YEAH. WE WANTED TO MAKE -- THE FBI WANTED TO ENSURE THAT  
11 OUR PROCESSES WERE IN TACT. I THINK THE FBI WAS ALWAYS OF THE,  
12 YOU KNOW, THE PROCEDURE THAT WE WERE NOT GOING TO VIOLATE,  
13 INTENTIONALLY VIOLATE THE FOURTH AMENDMENT RIGHTS.

14 BUT THE RULING CERTAINLY AFFECTED NCMEC'S INTERNAL  
15 POLICIES AND PRACTICES.

16 Q. UM-HUM.

17 A. BUT HAVING BEEN THERE AT THE TIME THAT THIS RULING CAME  
18 DOWN, IT WAS -- YOU KNOW, IT WAS -- IT WAS EVIDENT THAT THERE  
19 WAS A REAL SORT OF PROACTIVE EFFORT TO ENSURE THAT WHAT WAS  
20 BEING DONE WOULD NOT RESULT IN ADVERSE RULINGS SUCH AS WHAT  
21 HAPPENED IN THE KEITH DECISION.

22 Q. TO COMPLY WITH THE COURT'S INTERPRETATION OF THE FOURTH  
23 AMENDMENT?

24 A. CORRECT.

25 Q. DID YOU EVER INSTRUCT AN ISP TO FILE A REPORT IF THERE WAS

1 NO INDICATION THAT IMAGES SUBMITTED WITH THE REPORT HAD BEEN  
2 VIEWED BY COMPANY EMPLOYEES?

3 A. NO.

4 Q. DID YOU EVER REQUEST ADDITIONAL INFORMATION OR  
5 INVESTIGATION IF IT WASN'T CLEAR WHETHER THE IMAGES HAD BEEN  
6 VIEWED BY THE COMPANY?

7 A. NO. MY ONLY CONTACTS WOULD BE JUST CLARIFICATION ON WHAT  
8 WAS ALREADY DONE.

9 Q. OKAY. FINALLY, MY QUESTIONS TODAY, HAVE THEY COVERED  
10 EVERY DETAIL THAT YOU KNOW ABOUT THIS CASE AND THE  
11 INVESTIGATION?

12 A. NO.

13 Q. HAVE YOU MERELY ANSWERED THE QUESTIONS THAT I'VE ASKED  
14 YOU?

15 A. YES.

16 Q. WHEN YOU TESTIFIED ABOUT CONVERSATIONS YOU HAD WITH OTHERS  
17 OR DOCUMENTS YOU REVIEWED, DID YOU TESTIFY TO THE EXACT WORDS  
18 USED, OR JUST TO THE SUBSTANCE OF THE CONVERSATIONS AND  
19 DOCUMENTS?

20 A. JUST TO THE SUBSTANCE OF THE CONVERSATION AND DOCUMENTS.

21 MS. HARRIS: DOES THE COURT HAVE ANY FURTHER  
22 QUESTIONS FOR AGENT SCHELBLE?

23 THE COURT: NO.

24 MS. HARRIS: THANK YOU. THAT'S IT.

25 THE COURT: AND THE NAME IS SCHELBLE,

1 S-C-H-E-L-B-L-E, BUT THE LAST L IS SILENT?

2 THE WITNESS: THAT'S CORRECT.

3 THE COURT: ALL RIGHT.

4 GO AHEAD, PLEASE, WITH ANY CROSS.

5 MR. ARCHER: THANK YOU, YOUR HONOR.

6 **CROSS-EXAMINATION**

7 BY MR. ARCHER:

8 Q. AGENT SCHELBLE, IF I COULD ASK, WHEN YOU WERE EMBEDDED  
9 WITH NCMEC, HOW MANY OTHER AGENCIES ALSO HAD AGENTS EMBEDDED  
10 WITH NCMEC?

11 A. LET'S SEE. THE UNITED STATES MARSHAL'S SERVICE; DHS; HSI;  
12 THE UNITED STATES SECRET SERVICE; THE UNITED STATES POSTAL  
13 INSPECTOR SERVICE; AND THEN AT TIMES, ALTHOUGH THERE WERE  
14 PERIODS WHERE THERE WAS NOT A PRESENCE FROM THAT ENTITY, THERE  
15 WAS A LIAISON FROM ONE OF THE INVESTIGATORY AGENCIES OF THE  
16 DEPARTMENT OF DEFENSE. SOMETIMES IT WAS DCIS, OTHER TIMES IT  
17 WAS NCIS.

18 BUT, YEAH, THAT SHOULD BE THE EXTENT.

19 Q. OKAY. AND IN YOUR ESTIMATE, ON AVERAGE, HOW MANY LAW  
20 ENFORCEMENT OFFICERS WERE STATIONED AT NCMEC WHILE YOU WERE  
21 THERE ON ANY GIVEN DAY?

22 A. SWORN?

23 Q. OR I GUESS I COULD EXPAND IT -- THAT'S A GOOD QUESTION.

24 SO DID YOU -- WHEN YOU WERE THERE, DID YOU HAVE -- YOU  
25 MENTIONED AN ANALYST BEFORE. HOW MANY PEOPLE WERE ON THE FBI

1 TEAM LOCATED AT NCMEC WHEN YOU WERE THERE?

2 A. WITHIN THE FBI TEAM, THERE WERE TWO AGENTS; AND IN TERMS  
3 OF PROFESSIONAL SUPPORT TEAM, OR ANALYSTS, WITH A SLIGHT  
4 FLUCTUATION, FOUR. SO A TOTAL FOOTPRINT OF SIX --

5 Q. OKAY.

6 A. -- WOULD HAVE BEEN THE TYPICAL AVERAGE.

7 Q. FOR THE FBI. AND WAS IT SIMILAR FOR THE OTHER AGENCIES OR  
8 WAS IT --

9 A. NO. THE FBI'S PRESENCE WAS PROBABLY THE LARGEST, AND I  
10 THINK THAT'S JUST PROBABLY BASED ON THE AMOUNT OF CASE LOAD.

11 DHS, HSI, FOR THE MOST PART, HAD ONE, SOMETIMES THERE MAY  
12 HAVE BEEN TWO; PERHAPS TWO WITH UNITED STATES POSTAL INSPECTOR  
13 SERVICE; AND THEN ONE WITH THE U.S. MARSHAL'S SERVICE; ONE WITH  
14 THE UNITED STATES SECRET SERVICE.

15 Q. OKAY.

16 A. AND THEN ONE OF THE DOD REPS.

17 Q. OKAY. AND YOU MENTIONED YOU WERE THERE WHEN THE KEITH  
18 DECISION CAME DOWN?

19 A. YES.

20 Q. SO IT SOUNDS LIKE THAT WAS A TOPIC OF HOT DISCUSSION AT  
21 THE TIME.

22 A. YEAH. IT -- IT ABSOLUTELY -- AT LEAST WITHIN THE CONTEXT  
23 OF THE CYBERTIPLINE FUNCTION OF THE NATIONAL CENTER, YEAH.

24 Q. SO ULTIMATELY THERE WAS A CHANGE TO THE, THE TIP LINE  
25 FORMAT?

1 A. YES. YES, THAT'S CORRECT.

2 Q. ALL RIGHT. SO THAT WAS THE FILE REVIEW BOX WAS ADDED AT  
3 THAT POINT?

4 A. YEAH. THE FILE REVIEW BOX WAS ADDED.

5 I BELIEVE INTERNALLY THE NATIONAL CENTER CHANGED THEIR  
6 PROCESSES. I WAS NOT PART OF THE DISCUSSIONS THE NATIONAL  
7 CENTER HAD INTERNALLY, BUT I WAS LATER BRIEFED UPON IN TERMS OF  
8 HOW THE CYBERTIPLINE WAS NOW DIFFERENT AND WHAT IT WOULD LOOK  
9 LIKE TO ISP'S AND WHAT KIND OF INFORMATION WE WOULD NOW SEE ON  
10 OUR END.

11 Q. AND YOU UNDERSTOOD FROM THOSE CONVERSATIONS THAT THE  
12 REASON FOR THE CHANGE WAS BECAUSE OF THE KEITH DECISION; IS  
13 THAT CORRECT?

14 A. THAT IS CORRECT.

15 Q. OKAY. SO YOU MENTIONED THAT THERE WAS NO 302 OF THE  
16 OCTOBER 2014 MEETING. DID YAHOO PRESENT DOCUMENTS AT THAT  
17 MEETING? FOR INSTANCE, AN ORGANIZATIONAL CHART OF THE TARGETS  
18 IN THEIR INVESTIGATION?

19 A. YEAH, I BELIEVE THEY HAD -- THEY HAD COME UP WITH A, LIKE  
20 A LINK CHART TO SORT OF SHOW -- TO SORT OF DEMONSTRATE WHY THEY  
21 THOUGHT THINGS WERE RELATED.

22 Q. OKAY. AND SO DID THEY DISCUSS -- I MEAN --

23 THE COURT: CAN I ASK YOU, CAN YOU CLARIFY WHETHER  
24 THAT'S THE FALL OF 2014 MEETING? THE DECEMBER 2016 -- 2014  
25 MEETING?

1 MR. ARCHER: YOUR HONOR, I THINK MY -- MY QUESTION  
2 WAS AS TO THE OCTOBER --

3 THE COURT: OCTOBER 2014 MEETING?

4 MR. ARCHER: YES.

5 THE COURT: SO I JUST WANTED TO CLARIFICATION AS TO  
6 WHICH MEETING AT THE END OF 2014 WE'RE TALKING ABOUT.

7 THE WITNESS: YEAH, THAT'S A GOOD QUESTION.

8 BY MR. ARCHER:

9 Q. DID YOU -- I GUESS --

10 A. I'M NOT SURE I CAN RECALL IF IT WAS THE OCTOBER MEETING OR  
11 THE DECEMBER MEETING.

12 BUT I DO RECALL IN AT LEAST ONE OF THOSE MEETINGS WHERE  
13 THEY HAD PRINTED UP SORT OF A CHART TO SORT OF SHOW HOW THE  
14 WHOLE -- HOW WHAT THEY SAW WAS SORT OF LINKED TOGETHER BETWEEN  
15 A USER, A WEBCAM, AND XOOM TO SORT OF SHOW WHAT THEY BELIEVED  
16 THEY WERE SEEING --

17 Q. OKAY.

18 A. -- AND HOW IT RELATED.

19 Q. AND SO THEY -- THEY FLEW ACROSS COUNTRY, AND PRESUMABLY  
20 THE FOLKS AT YAHOO HAD AN OPPORTUNITY TO EXPLAIN THE CONTENTS  
21 OF THE CHART AND HOW THEY RELATED IT TO THEIR INVESTIGATION.

22 DO YOU RECALL THAT OCCURRING AT THE MEETING?

23 A. YEAH. WHETHER THEY CAME FROM CALIFORNIA HERE OR WHETHER  
24 THEY WERE ALREADY ON THE EAST COAST, I DON'T KNOW. BUT YES.

25 Q. OKAY. BUT THEY CAME IN PERSON AND EXPLAINED --

1 A. YES, THAT'S CORRECT.

2 Q. GOT IT. SO THEY WEREN'T READING -- WERE THEY READING  
3 VERBATIM OFF OF THE CHART, OR WERE THEY EXPLAINING IT AND SORT  
4 OF GIVING YOU THEIR PERSPECTIVE ON HOW THESE FIT INTO THE  
5 INVESTIGATION?

6 A. I WOULD SAY THE LATTER, THEY WERE GIVING THEIR PERSPECTIVE  
7 ON WHAT THEY BELIEVED THEY SAW.

8 Q. OKAY. AND WAS IT YOUR UNDERSTANDING THAT SOME OF THE  
9 PEOPLE ON THE CHART, OR SOME OF THE ACCOUNTS ON THE CHART AT  
10 THAT POINT IN, LET'S JUST SAY, DECEMBER OF 2014, THAT SOME OF  
11 THOSE HAD CYBERTIPS SUBMITTED AND SOME OF THEM DID NOT?

12 A. YEAH. I BELIEVE SEAN HAD -- HE HAD PROVIDED ME A LIST, OR  
13 HE SENT ME A LIST OF APPROXIMATELY 65 CYBERTIPS. THEY WOULD  
14 HAVE HAD A NUMBER, LIKE A SEVEN DIGIT NUMBER, OF CYBERTIPLINE  
15 REPORTS THAT HE FELT WERE RELATED TO WHAT THEY WERE SEEING.

16 Q. OKAY. BUT THE -- SO ABOUT 65 CYBERTIPS?

17 A. THAT SOUNDS ABOUT RIGHT.

18 Q. OKAY. AND THEN THE OVERALL NUMBERS PRESENTED IN DECEMBER  
19 OF 2014 WERE IN THE HUNDREDS FOR EACH OF THE SELLER AND BUYER  
20 CATEGORIES? DO YOU RECALL?

21 A. THAT I DON'T RECALL. I RECALL THE INITIAL -- THE INITIAL  
22 65.

23 Q. UM-HUM.

24 A. AND THAT WAS PRIMARILY BECAUSE I HAD A FUNCTION AT THAT  
25 POINT, ALONG WITH HSI, TO SORT OF ASCERTAIN WHERE THOSE 65

1 WERE, BECAUSE IF IT WAS GOING TO BE SORT OF A JOINT  
2 COLLABORATION, WE WANTED TO MAKE SURE THAT ONE OF THOSE HADN'T  
3 ALREADY BEEN SENT OUT TO A STATE ICAC OR PERHAPS PUT ON THE VPN  
4 TO INTERNATIONAL PARTNERS. WE WANTED TO MAKE SURE, FROM A  
5 DECONFLICTION PERSPECTIVE, THAT WE HAD THOSE 65 ACCOUNTED FOR.

6 Q. OKAY. BUT THE -- THE REPORT IN DECEMBER, THE SUPPLEMENTAL  
7 REPORT THAT WAS SUBMITTED IN DECEMBER, DID YOU HAVE AN  
8 OPPORTUNITY TO REVIEW THAT PRIOR TO THE MEETING? OR DID YOU  
9 JUST GO OVER IT AT THE MEETING?

10 A. IT JUST WOULD HAVE BEEN PROBABLY AT THE MEETING, BECAUSE  
11 AT THAT LATER -- AT THAT LATER -- AT THAT SUBSEQUENT MEETING,  
12 BY THAT POINT WE WOULD HAVE DETERMINED THAT, AT LEAST ON THE  
13 FBI SIDE, WHO WOULD HAVE BEEN THE INVESTIGATIVE COMPONENT. SO  
14 I BELIEVE AT THAT POINT WE HAD BROUGHT IN THE ACTUAL --  
15 SOMEBODY FROM THAT TEAM.

16 Q. WAS THAT JEFF YESENSKY?

17 A. YES.

18 Q. OKAY. GOT IT. AND SO JUST TO CLARIFY FOR THE RECORD,  
19 WHEN YOU'RE SAYING THE LATER SUBSEQUENT MEETING, ARE WE TALKING  
20 ABOUT DECEMBER 2014?

21 A. YES, I BELIEVE SO.

22 Q. OKAY. SO THE FIRST MEETING -- DID YOU ATTEND BOTH THE  
23 OCTOBER 2014 AND THE DECEMBER 2014 MEETINGS?

24 A. YES.

25 Q. OKAY.



1 A. AND THERE WAS A THIRD MEETING THAT I WAS NOT AT.

2 Q. OKAY. AND THERE ARE -- I GUESS WHAT I'M GETTING AT IS THE  
3 DOCUMENTS THAT THEY PRESENTED, THAT YAHOO PRESENTED TO YOU THAT  
4 INDICATED THAT THEY HAD IDENTIFIED -- DO YOU RECALL A  
5 DISTINCTION BETWEEN BUYER ACCOUNTS AND SELLER ACCOUNTS IN TERMS  
6 OF THE WEBCAM?

7 A. I RECALL THEM, YEAH, TALKING ABOUT BUYER ACCOUNTS AND  
8 SELLER ACCOUNTS.

9 Q. OKAY. AND THE NUMBERS FOR THE BUYER ACCOUNTS WERE -- AND  
10 I'M NOT -- I'M CERTAINLY NOT ASKING YOU TODAY TO REMEMBER THE  
11 EXACT NUMBERS, BUT SOMEWHERE SIGNIFICANTLY NORTH OF 65? THE  
12 300 RANGE-ISH?

13 A. YEAH, I DON'T RECALL.

14 Q. OKAY.

15 A. THAT DOESN'T SOUND LIKE THAT WOULD BE OUTSIDE THE LINES,  
16 BUT I DON'T RECALL SPECIFICALLY.

17 Q. OKAY. I GUESS THEN -- BUT DO YOU RECALL THAT THERE WERE  
18 SOME ACCOUNTS THAT WERE PRESENTED IN THE MATERIALS FOR WHICH  
19 THERE HAD NOT YET BEEN CYBERTIPS SUBMITTED?

20 A. I MEAN, I COULDN'T SAY. I COULDN'T SAY FOR CERTAIN.

21 Q. OKAY.

22 A. AT THIS POINT -- I MEAN, I DID NOT KNOW EVERY USER NAME  
23 AND HANDLE WITHIN THE 65. I WANTED TO MAKE SURE THAT THE 65  
24 CYBERTIPLINE REPORTS WEREN'T SENT SOMEWHERE ELSE. I DID NOT  
25 PERSONALLY LOOK AT ALL 65 ACCOUNTS, SO I COULDN'T SAY IN TERMS

1 OF DID THEY DEPICT A USER NAME OR HANDLE THAT WAS DIFFERENT  
2 FROM WHAT WAS BEING DISCUSSED IN THE MEETING.

3 MR. ARCHER: OKAY. NO FURTHER QUESTIONS.  
4 THANK YOU.

5 THE COURT: ALL RIGHT.  
6 ANY REDIRECT?

7 MS. HARRIS: NO, YOUR HONOR.

8 THE COURT: ALL RIGHT. MAY THIS WITNESS BE EXCUSED  
9 SUBJECT TO RECALL OR NOT SUBJECT TO RECALL?

10 MS. HARRIS: I DON'T HAVE ANY FURTHER QUESTIONS FOR  
11 THE WITNESS, YOUR HONOR.

12 MR. ARCHER: YES, YOUR HONOR, NOT SUBJECT TO RECALL.

13 THE COURT: OKAY. THEN YOU'VE COMPLETED YOUR  
14 TESTIMONY AND YOU'RE FREE TO LEAVE.

15 ARE YOU GOING TO CALL ANOTHER WITNESS?

16 MS. HARRIS: JUST ONE MORE, AGENT MARCEAU.

17 THE COURT: ALL RIGHT.

18 MS. HARRIS: THE UNITED STATES CALLS SPECIAL AGENT  
19 CHRIS MARCEAU.

20 THE COURT: ALL RIGHT.

21 THE CLERK: GOOD AFTERNOON, SIR.

22 THE WITNESS: GOOD AFTERNOON.

23 **(GOVERNMENT'S WITNESS, CHRIS MARCEAU, WAS SWORN.)**

24 THE WITNESS: I DO.

25 THE CLERK: THANK YOU.

1 PLEASE HAVE A SEAT AND STATE AND SPELL YOUR FULL NAME.

2 THE WITNESS: SPECIAL AGENT CHRIS MARCEAU, LAST NAME  
3 M-A-R-C-E-A-U.

4 **DIRECT EXAMINATION**

5 BY MS. HARRIS:

6 Q. SPECIAL AGENT MARCEAU, ARE YOU EMPLOYED?

7 A. YES.

8 Q. WHERE?

9 A. THE FBI.

10 Q. IN WHAT CAPACITY?

11 A. I'M A SUPERVISORY SPECIAL AGENT AT CYBER VISION.

12 THE COURT: CAN YOU ADJUST THE MICROPHONE, PLEASE.

13 THANK YOU.

14 THE WITNESS: IS THAT -- HOW'S THAT?

15 BY MS. HARRIS:

16 Q. HOW LONG HAVE YOU HELD THAT POSITION AS A SUPERVISORY  
17 SPECIAL AGENT?

18 A. FOR A YEAR AND A HALF.

19 Q. HAVE YOU HAD ANY OTHER POSITIONS WITH THE FBI?

20 A. I'VE BEEN A SPECIAL AGENT FOR THE FBI SINCE 2008.

21 Q. AND IS THAT WHEN YOU STARTED WORKING FOR THE FBI?

22 A. YES.

23 Q. CAN YOU BRIEFLY EXPLAIN YOUR EDUCATIONAL BACKGROUND,  
24 TRAINING, AND EXPERIENCE?

25 A. I WAS IN THE U.S. ARMY UNTIL 2008, BACHELOR'S DEGREE IN

1 MECHANICAL ENGINEERING, AND A MASTER'S DEGREE IN BUSINESS  
2 ADMINISTRATION.

3 Q. AT SOME POINT WERE YOU ASSIGNED TO A UNIT INVESTIGATING  
4 VIOLENT CRIMES AGAINST CHILDREN?

5 A. YES.

6 Q. WHICH UNIT WAS THAT?

7 A. THAT WAS C15 OUT OF THE SAN JOSE. IT'S A SQUAD IN THE  
8 SAN JOSE RESIDENT AGENCY OF THE SAN FRANCISCO FIELD OFFICE.

9 Q. DID YOU RECEIVE ANY SPECIALIZED TRAINING RELATING TO YOUR  
10 WORK ON CRIMES AGAINST CHILDREN?

11 A. DOZENS.

12 Q. OKAY. WHAT'S THAT?

13 A. INVESTIGATIVE MEANS, INTERVIEWING TECHNIQUES FOR BOTH  
14 ADOLESCENTS AND ADULTS, INTERROGATION TECHNIQUES, FORENSICS,  
15 HUMAN TRAFFICKING, CHILD EXPLOITATION, RECOVERY OF VICTIMS, HOW  
16 TO PROCESS RAPE CASES, ET CETERA.

17 Q. APPROXIMATELY HOW MANY CASES HAVE YOU INVESTIGATED  
18 INVOLVING CRIMES AGAINST CHILDREN?

19 A. HUNDREDS.

20 Q. ARE YOU FAMILIAR WITH THE INDICTMENT FILED AGAINST  
21 JOHNNY RAY WOLFENBARGER?

22 A. YES.

23 Q. IS YOUR TESTIMONY TODAY BASED OFF OF YOUR INVESTIGATION  
24 INTO THIS MATTER AND THAT OF OTHER AGENTS OR LAW ENFORCEMENT  
25 PERSONNEL WHO INVESTIGATED THAT MATTER?

1 A. YES.

2 Q. IS YOUR TESTIMONY ALSO BASED ON DOCUMENTS AND OTHER ITEMS  
3 THAT YOU REVIEWED?

4 A. YES.

5 Q. HOW DID MR. WOLFENBARGER COME TO THE FBI'S ATTENTION?

6 A. THERE WAS A CYBERTIP FILED WITH THE NATIONAL CENTER FOR  
7 MISSING AND EXPLOITED CHILDREN.

8 Q. OKAY. WAS YAHOO ABLE TO IDENTIFY THE ACCOUNT ASSOCIATED  
9 WITH THE CYBERTIP?

10 A. THEY WERE.

11 Q. HOW SO?

12 A. IT WAS JRWOLFEN02@YAHOO.COM. YAHOO HAD CONDUCTED A SEARCH  
13 OF THEIR INTERNAL SYSTEMS AND THEY HAD FOUND JRWOLFEN02 WAS  
14 VIOLATING THEIR TERMS OF SERVICE AND IT CONTAINED CHILD  
15 EXPLOITATION.

16 MR. ARCHER: OBJECTION. LACKS PERSONAL KNOWLEDGE.

17 AND, FRANKLY, COULD WE HAVE AN OFFER OF PROOF AS TO WHAT  
18 HIS TESTIMONY IS GOING TO BE TODAY? I'M NOT 100 PERCENT SURE.  
19 BECAUSE MY UNDERSTANDING IS HE WAS ON THE CASE AFTER THE SEARCH  
20 AND EXECUTION, OR THE APPLICATION FOR THE SEARCH WARRANT.

21 MS. HARRIS: I'M ACTUALLY -- I HAVE A VERY LIMITED  
22 SET OF QUESTIONS, YOUR HONOR, DEALING WITH -- HE WAS THE PERSON  
23 WHO CONDUCTED THE SEARCH WARRANT EXECUTION AND REVIEWED THE  
24 ACCOUNT, AND ALSO IN REFERENCE TO AN INTERVIEW THAT HE HAD WITH  
25 MR. WOLFENBARGER AS A RESULT.

1 MR. ARCHER: SO I DON'T KNOW HOW THAT WOULD BE  
2 RELEVANT TO WHAT THE DEFENSE HAS RAISED IN TERMS OF THE  
3 CHALLENGES. BUT, I MEAN, IF --

4 THE COURT: I'LL ALLOW IT.

5 BUT WHY DON'T YOU LAY THE FOUNDATION FOR HOW HE KNOWS WHAT  
6 YAHOO DID?

7 MS. HARRIS: SURE.

8 Q. IF YOU KNOW, GO AHEAD.

9 A. THIS IS WHAT HAPPENS WHEN THERE'S A CYBERTIP FILED WITH  
10 THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN. THERE  
11 IS NOT A NARRATIVE, BUT A SHORT RENDITION OF WHY THE REPORT IS  
12 BEING FILED, AND IN THAT, IT WAS THAT THERE WAS CHILD  
13 EXPLOITATION MATERIAL ACTIVE ON THE ACCOUNT.

14 Q. I SEE.

15 THE COURT: LET ME ASK MS. SHORTRIDGE, CAN YOU HEAR  
16 HIM?

17 THE REPORTER: NOT VERY WELL.

18 THE COURT: OKAY. CAN YOU PLEASE ADJUST THE  
19 MICROPHONE? AND YOU CAN ALSO CHANGE IT SO IT'S NOT AT AN  
20 ANGLE.

21 THANK YOU.

22 BY MS. HARRIS:

23 Q. BASED ON THE INFORMATION RECEIVED IN THE CYBERTIP, DID THE  
24 FBI PURSUE A SEARCH WARRANT?

25 A. YES.

1 Q. WERE YOU THE AFFIANT ON THE SEARCH WARRANT?

2 A. NO.

3 Q. WHO WAS THE AFFIANT?

4 A. AGENT TROMBETTA.

5 Q. WAS THE SEARCH WARRANT LATER GRANTED?

6 A. YES.

7 Q. AND WAS THE SEARCH WARRANT EXECUTED?

8 A. YES.

9 Q. AND WHO WAS IT WHO EXECUTED THE SEARCH WARRANT?

10 A. AGENT TROMBETTA ACTUALLY SERVED IT ON YAHOO, AND I WAS THE  
11 ONE WHO ACTUALLY PROCESSED THE RETURN.

12 Q. AND WHAT WAS THE RESULT OF THE PROCESS, YOUR PROCESSING OF  
13 THE RETURN?

14 A. THERE WERE CHILD EXPLOITATION IMAGES, VIDEOS, AND STILL  
15 PICTURES, AS WELL AS NUMEROUS CHATS IDENTIFYING THE RAPE OF  
16 CHILDREN, THE EXPLOITATION OF MINORS, AND NUMEROUS INSTANCES  
17 REQUESTING MORE OF THE SAME.

18 Q. SO AT SOME POINT IN YOUR INVESTIGATION, DID YOU SPEAK  
19 DIRECTLY WITH MR. WOLFENBARGER?

20 A. TWICE.

21 Q. HOW MANY -- OKAY. WHAT WERE -- THOSE TWO TIMES, WHEN WAS  
22 THAT?

23 A. I SPOKE TO MR. WOLFENBARGER ON AUGUST 2ND WHEN HE FLEW  
24 INTO SAN FRANCISCO INTERNATIONAL AIRPORT, AND I SPOKE --

25 THE COURT: WHAT'S THE YEAR?

1 THE WITNESS: 2016.

2 THE COURT: OKAY. THANK YOU.

3 GO AHEAD, PLEASE.

4 BY MS. HARRIS:

5 Q. GO AHEAD.

6 A. AND I SPOKE TO HIM AGAIN ON AUGUST 31ST, 2016, IN HIS HOME  
7 OF RECORD IN MORGAN HILL, CALIFORNIA.

8 Q. OKAY. AND WERE THOSE MEETINGS RECORDED?

9 A. YES.

10 MS. HARRIS: AND FOR THE RECORD, RECORDINGS OF THOSE  
11 INTERVIEWS WERE MANUALLY FILED PREVIOUSLY ON A DISK.

12 THE COURT: YES, WE'VE LISTENED TO THEM.

13 MS. HARRIS: CORRECT. OKAY.

14 Q. SO I WANT TO DISCUSS YOUR SECOND MEETING WITH  
15 MR. WOLFENBARGER ON AUGUST 31ST, 2016.

16 YOU SAID THAT OCCURRED IN MORGAN HILL?

17 A. YES.

18 Q. WHERE, APPROXIMATELY?

19 A. IT WAS OUTSIDE OF A PEET'S. I DON'T REMEMBER THE EXACT  
20 ADDRESS, BUT IT WAS A PEET'S COFFEE SHOP, WHICH IS IN A STRIP  
21 MALL, AND WE SPOKE IN A PARKING LOT NEXT TO AN ADJACENT EMPTY  
22 FIELD.

23 Q. HOW WAS THAT MEETING ARRANGED?

24 A. MR. WOLFENBARGER AND I EXCHANGED A PHONE CALL AND A TEXT  
25 MESSAGE.



1 Q. OKAY. HOW DID MR. WOLFENBARGER ARRIVE TO THE MEETING?

2 A. HE WAS DRIVING A WHITE MINIVAN IF I RECALL.

3 Q. WAS HE ACCOMPANIED BY ANYONE?

4 A. NO.

5 Q. SO HE CAME ALONE IN A CAR?

6 A. YES.

7 Q. DID YOU COME WITH ANYONE ELSE?

8 A. NO.

9 Q. WAS HE HANDCUFFED AT ALL DURING THIS MEETING?

10 A. NO.

11 Q. WAS HE ENCLOSED IN ANY WAY?

12 A. NO.

13 Q. DID HE SEEM SCARED OR FEARFUL TO YOU AT THE TIME?

14 A. NOT AT ALL.

15 Q. SO AT THAT TIME, DID MR. WOLFENBARGER DO ANYTHING TO

16 ASSIST YOUR INVESTIGATION?

17 A. MR. WOLFENBARGER WAS HELPING US IDENTIFY HIS VICTIMS SO  
18 THAT WE CAN RECOVER THOSE VICTIMS FROM BEING EXPLOITED BY OTHER  
19 SUBJECTS.

20 Q. HOW DID HE DO THAT?

21 A. HE PROVIDED US ONLINE CONSENT TO ASSUME HIS ONLINE  
22 IDENTITY, AND WE DO THAT WITH AN FD 1086. AN FD 1086, IT'S AN  
23 ASSUMED ONLINE IDENTITY FORM THAT WE USE AT THE FBI.

24 SO WHEN A SUBJECT WANTS TO COOPERATE WITH US, WE ASK IF  
25 THEY'LL SIGN THAT FORM, WHICH GIVES US CONSENT TO THEIR ENTIRE

1 ACCOUNT. WE THEN CHANGE THE ACTUAL PASSWORD AND THE FBI  
2 ASSUMES THE ACCOUNT.

3 MS. HARRIS: SO MAY I APPROACH, YOUR HONOR?

4 THE COURT: YES.

5 BY MS. HARRIS:

6 Q. SHOWING YOU WHAT'S BEEN PREVIOUSLY FILED IN A SEPARATE  
7 SUPPRESSION LITIGATION AS GOVERNMENT'S EXHIBIT 1F, WHAT IS THAT  
8 DOCUMENT (HANDING)?

9 A. THIS IS AN FD 1086, AN FBI FORM CONSENT TO ASSUME ONLINE  
10 IDENTITY AUTHORIZATION FORM.

11 Q. WAS THAT FILED WITH A DECLARATION THAT YOU PREVIOUSLY  
12 FILED IN RESPONSE TO A MOTION TO SUPPRESS STATEMENTS DURING  
13 THAT INTERVIEW?

14 A. YES.

15 Q. I'LL PUT IT UP HERE.

16 OKAY. NOW, CAN YOU PLEASE TAKE US THROUGH THIS FORM?  
17 WHAT IS IT? THERE'S A SIGNATURE THAT APPEARS HERE ON THE  
18 BOTTOM THIRD OF THE FORM; IS THAT CORRECT?

19 A. YES.

20 Q. WHOSE SIGNATURE IS IT?

21 A. THAT'S MR. WOLFENBARGER'S SIGNATURE.

22 Q. OKAY. AND THERE IS A SIGNATURE OF A WITNESS; IS THAT  
23 CORRECT?

24 A. YES.

25 Q. WHOSE SIGNATURE IS THAT?

1 A. THAT IS MINE.

2 Q. AND THE DATE THIS FORM WAS SIGNED?

3 A. AUGUST 31ST, 2016.

4 Q. OKAY. THERE ARE ACCOUNTS THAT ARE IDENTIFIED IN THE --  
5 UNDER ACCOUNT NAME. WHAT ARE THOSE ACCOUNTS?

6 A. IT'S JRWOLFEN02, AND JRWOLFEN2000@AOL.COM.

7 Q. AND IT LOOKS LIKE THERE'S A PASSWORD PROVIDED AS WELL.

8 A. THAT'S CORRECT.

9 Q. WHO PROVIDED THE PASSWORD?

10 A. MR. WOLFENBARGER.

11 Q. WHO PROVIDED THE ACCOUNTS TO IDENTIFY THEM?

12 A. MR. WOLFENBARGER.

13 Q. AND WHAT AUTHORIZATION DID HE GIVE YOU AT THAT TIME  
14 REGARDING THOSE ACCOUNTS?

15 A. HE GAVE THE FBI CONSENT TO ASSUME THE IDENTITY OF THE  
16 ACCOUNTS, AS WELL AS SEARCH THE ACCOUNTS.

17 Q. DID HE PROVIDE A PASSWORD FOR THE JRWOLFEN02 ACCOUNT?

18 A. HE PROVIDED MULTIPLE PASSWORDS TO THE DIFFERENT ACCOUNTS.

19 Q. SO I'M FLIPPING TO PAGE 2 OF THE DOCUMENT.  
20 WHAT IS THIS?

21 A. THESE ARE MY NOTES FROM THE INTERVIEW.

22 Q. AND WHAT DO THESE NOTES SAY?

23 A. SO IN THE TOP RIGHT-HAND CORNER, WE HAVE A COUPLE  
24 DIFFERENT PASSWORDS THAT MR. WOLFENBARGER WANTED US TO TRY FOR  
25 HIS ACCOUNT.

1 Q. OKAY. AND DID YOU TRY THEM DURING YOUR INTERVIEW WITH HIM  
2 ON THE 31ST OF AUGUST, 2016?

3 A. WE DID.

4 Q. ALL OF THEM?

5 A. YEAH. WE TRIED MULTIPLE PASSWORDS, EVERY ONE THAT  
6 MR. WOLFENBARGER COULD REMEMBER, BUT WE COULD NOT OBTAIN ACCESS  
7 TO HIS ACCOUNT.

8 Q. AND TO BE CLEAR, AS A RESULT OF THIS WAIVER, HE WAS GIVING  
9 YOU AUTHORIZATION TO MONITOR INCOMING AND OUTGOING  
10 COMMUNICATIONS IN THAT -- IN THESE ACCOUNTS LISTED?

11 A. YES.

12 Q. AND USING OR DISCLOSING ACCESS INFORMATION?

13 A. YES.

14 Q. SEARCHING STORED CONTENT IN THE ACCOUNT?

15 A. YES.

16 Q. SENDING AND RECEIVING COMMUNICATIONS WITH INDIVIDUALS OR  
17 GROUPS UTILIZING THE ABOVE-NAMED ACCOUNTS?

18 A. YES.

19 Q. AND HE ALSO STATES THAT HE UNDERSTOOD THAT THE FBI WILL  
20 CHANGE THE PASSWORD SO THAT HE WOULDN'T HAVE ACCESS?

21 A. YES.

22 THE COURT: LET ME ASK A QUESTION. WE LISTENED TO  
23 THOSE RECORDINGS AT THE END OF MARCH AND IN EARLY APRIL OF 2018  
24 BECAUSE THAT MOTION TO SUPPRESS WAS WITHDRAWN THE AFTERNOON  
25 BEFORE THE MORNING HEARING, SO I WAS PRETTY MUCH READY TO GO ON

1 THAT MOTION.

2 MS. HARRIS: UM-HUM.

3 THE COURT: I DON'T KNOW IF WE STILL HAVE THOSE  
4 RECORDINGS. THEY WERE ON A DVD, IF I RECALL.

5 MS. HARRIS: YES, YOUR HONOR.

6 THE COURT: BECAUSE THAT MOTION WAS WITHDRAWN,  
7 EVERYTHING HAS BEEN RECYCLED, ANY CHAMBERS COPIES. I DON'T  
8 KNOW -- I ASSUME THE CLERK'S OFFICE STILL HAS AN ORIGINAL, BUT  
9 I'M NOT CERTAIN.

10 I'D LIKE THE DVD FOR THAT AUGUST 31, 2016 CALL TO BE  
11 REPROVIDED.

12 MS. HARRIS: YES, YOUR HONOR. WE CAN DO THAT.

13 THE COURT: THE SAME COPY OF WHAT YOU PREVIOUSLY  
14 FILED WITH YOUR OPPOSITION.

15 MS. HARRIS: YES, YOUR HONOR. WE CAN DO THAT.

16 THE COURT: OKAY. THANK YOU.

17 BY MS. HARRIS:

18 Q. SO APPROXIMATELY HOW LONG DID THAT INTERVIEW LAST?

19 A. APPROXIMATELY 90 MINUTES.

20 Q. AND WHAT HAPPENED AFTER THE INTERVIEW CONCLUDED?

21 A. MR. WOLFENBARGER DEPARTED THE AREA.

22 Q. DID YOU ARREST HIM AFTER THE INTERVIEW WAS DONE?

23 A. NO.

24 Q. DID YOU EVER THREATEN TO ARREST HIM IF HE DIDN'T SHOW UP?

25 A. NO.

1 Q. DID YOU EVER HAVE ANY COMMUNICATIONS WITH SEAN ZADIG OR  
2 ANYONE ELSE AT YAHOO RELATED TO YOUR INVESTIGATION OF  
3 MR. WOLFENBARGER?

4 A. NO.

5 Q. HOW DID YOU COME TO THAT DETERMINATION?

6 A. WE SEARCHED ALL OUR RECORDS, WE SCRUBBED OUR PHONES, WE  
7 SCRUBBED ALL THE E-MAIL ACCOUNTS WE HAVE AT FBI, BUT I HAD NO  
8 CONTACT WITH MR. ZADIG.

9 Q. YOUR PERSONAL -- YOU PERSONALLY HAD NO CONTACT?

10 A. CORRECT.

11 Q. ALL RIGHT. MY QUESTIONS HAVE NOT COVERED EVERY DETAIL  
12 THAT YOU KNOW ABOUT THIS CASE AND THE INVESTIGATION; IS THAT  
13 CORRECT?

14 A. YES.

15 Q. HAVE YOU MERELY ANSWERED THE QUESTIONS THAT I HAVE ASKED  
16 YOU?

17 A. YES.

18 Q. WHEN YOU TESTIFIED ABOUT CONVERSATIONS YOU HAD WITH OTHERS  
19 OR DOCUMENTS YOU REVIEWED, EXCEPT THE ONES THAT WE DISCUSSED  
20 TODAY, DID YOU TESTIFY TO THE EXACT WORDS USED, OR JUST TO THE  
21 SUBSTANCE OF THE CONVERSATIONS AND DOCUMENTS?

22 A. TO THE SUBSTANCE.

23 MS. HARRIS: DOES THE COURT HAVE ANY FURTHER  
24 QUESTIONS FOR SPECIAL AGENT MARCEAU?

25 THE COURT: NO.

1 I DON'T THINK IT'S RELEVANT FOR PURPOSES OF THESE TWO  
2 MOTIONS, BUT WHY DON'T YOU GO AHEAD AND GIVE US COURTESY COPIES  
3 OF THE AUGUST 2ND, 2016 INTERVIEW THAT WAS DONE AT THE  
4 SAN FRANCISCO INTERNATIONAL AIRPORT?

5 MS. HARRIS: YES, YOUR HONOR.

6 THE COURT: I DON'T THINK IT'S RELEVANT FOR THESE  
7 PURPOSE, BUT JUST FOR COMPLETION OF THE RECORD, I'D LIKE TO  
8 HAVE IT AGAIN.

9 MS. HARRIS: THANK YOU.

10 THE COURT: I DISPOSED OF THE ONES FROM LAST YEAR.  
11 OKAY. GO AHEAD, PLEASE, WITH ANY CROSS.

12 MR. ARCHER: NO QUESTIONS, YOUR HONOR. THANK YOU.

13 THE COURT: ALL RIGHT. IS THIS WITNESS EXCUSED  
14 SUBJECT TO RECALL?

15 MS. HARRIS: YES, YOUR HONOR.

16 MR. ARCHER: YES, YOUR HONOR, NOT SUBJECT TO RECALL.

17 THE COURT: ALL RIGHT. THEN YOU HAVE COMPLETED YOUR  
18 TESTIMONY.

19 DO YOU HAVE ANY MORE WITNESSES?

20 MS. HARRIS: NOTHING FURTHER FROM THE GOVERNMENT,  
21 YOUR HONOR.

22 THE COURT: OKAY.

23 AND, MR. ARCHER, YOU PREVIOUSLY REPRESENTED THAT YOU WOULD  
24 NOT HAVE ANY WITNESSES. IS THAT CORRECT?

25 MR. ARCHER: THAT IS CORRECT, YOUR HONOR.

1 THE COURT: OKAY. SO HAVE WE CONCLUDED THEN THE  
2 EVIDENTIARY HEARING FOR THE TWO PENDING MOTIONS?

3 MR. ARCHER: YES, YOUR HONOR.

4 MS. HARRIS: YES, YOUR HONOR.

5 THE COURT: OKAY. THEN THANK YOU ALL VERY MUCH.

6 THE CLERK: COURT ADJOURNED.

7 THE COURT: THE TIME IS NOW 3:24.

8 (THE PROCEEDINGS WERE CONCLUDED AT 3:24 P.M.)

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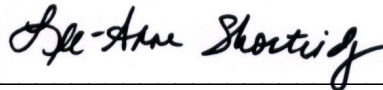
25



CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: AUGUST 7, 2018